

## CALIFORNIA COASTAL COMMISSION

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# Items T15.5, 16, 17

**Staff:** Christine Chestnut-SF  
**Staff Report:** February 24, 2006  
**Hearing Date:** March 7, 2006

## STAFF REPORT AND FINDINGS FOR NOTICE OF VIOLATION HEARING, CEASE AND DESIST ORDER, AND RESTORATION ORDER

**NOTICE OF VIOLATION:** CCC-06-NOV-01

**CEASE AND DESIST ORDER AND RESTORATION ORDER:** CCC-06-CD-02 and CCC-06-RO-02

**RELATED VIOLATION FILE:** V-5-01-037

**PROPERTY LOCATION:** The property is located at 437 Paseo de la Playa, in Torrance in Los Angeles County (**Exhibit 1**).

**DESCRIPTION OF PROPERTY:** .64-acre parcel identified by Los Angeles County Assessor as APN 7512-003-022.

**PROPERTY OWNERS:** Chris G. Bredesen and Virginia C. Bredesen, Trustees of the C.G. & V.C. Bredesen Trust

**VIOLATION DESCRIPTION:** Unpermitted development on the face and at the toe of a coastal bluff, including unpermitted construction of a 1,059 linear-foot, four-foot wide, concrete and flagstone walkway with handrails, posts and edges; irrigation system; 910 square-foot, thirteen-foot high shade structure; 1218 square-foot, two-tier, concrete and flagstone patio; fire pit; storage locker; plastic sheeting covering a permitted chain link fence, and concrete planters.

**SUBSTANTIVE FILE DOCUMENTS:** 1. Cease and Desist Order and Restoration

- Order Files No. CCC-06-CD-02 and CCC-06-RO-02;
2. Notice of Violation File No. CCC-06-NOV-01
  3. Exhibits 1 through 8.

**CEQA STATUS:**

Exempt (CEQA Guidelines (CG) §§ 15061(b)(3)), and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308, and 15321).

**I. SUMMARY OF STAFF RECOMMENDATION**

The property at issue in this enforcement matter is a .64-acre parcel located at 437 Paseo de la Playa, in the City of Torrance in Los Angeles County. The property is owned by Chris G. Bredesen and Virginia C. Bredesen, as Trustees of the C.G. & V.C. Trust (collectively referred to as “Respondents”). Unpermitted development has occurred on the face and at the toe of a coastal bluff located on the property seaward of the residence, including the unpermitted construction of:

1. A 1,059 linear-foot, four-foot wide, concrete and flagstone walkway with handrails, posts, and edges;
2. An irrigation system;
3. A 910 square-foot, thirteen-foot high, shade structure;
4. A 1218 square-foot, two-tier, concrete and flagstone patio;
5. A fire pit;
6. A storage locker;
7. Plastic sheeting covering a permitted chain link fence;
8. Concrete planters.

The development is both unpermitted and inconsistent with Coastal Act Sections 30251 and 30253, in that it is not visually compatible with the rest of the relatively undisturbed bluff and adjacent beach, moves the line of private structures closer to the public beach, and has adverse impacts on the public's views of the bluff from the beach. Furthermore, the unpermitted development does not minimize adverse impacts to natural landforms consistent with the Coastal Act and will also decrease the bluff's contribution to beach sand supply. The unpermitted development is therefore inconsistent with the resource protection policies of the Coastal Act. Additionally, in June of 1976, the Commission issued coastal development permit (CDP) No. P-76-7342, which authorized the construction of a residence, detached garage, arcade, pool, and hot tub on the bluff top portion of the property. The permit prohibited the construction of any of the approved development within a twenty-five foot bluff setback area, clearly indicating the Commission's concern about the adverse resource impacts of development too close to the bluff edge or bluff face. Not only does the unpermitted development at issue in these proceedings extend well beyond the setback area, but it extends all the way down the bluff face to the toe of the bluff and onto the sandy beach immediately seaward of the bluff.

Development on other properties is irrelevant to this enforcement proceeding, which involves the failure of Respondents to obtain the required Coastal Development Permit for the development on their property. Even if this other development was relevant, which it clearly is not, such development is distinguishable from the unpermitted development at issue. Furthermore, since approving a few older permits for development in the area, the Commission has consistently taken the position that development on the bluff face seaward of the Paseo de la Playa is inconsistent with the resource protection policies of the Coastal Act and has even imposed a twenty-five foot bluff setback condition on permits for new bluff top development in the area.<sup>1</sup>

In July of 2002, after repeated attempts by California Coastal Commission (“Commission”) staff to resolve the violations on the property, the Respondents submitted an extremely incomplete CDP application that was returned to them as incomplete. Respondents submitted a second application and withdrew it before the Commission could act on it. Finally, on August 12, 2004, the Respondents submitted a third CDP application, No. 5-04-324, seeking after-the-fact authorization for the cited unpermitted development. On June 7, 2005, the Commission denied the permit application, finding the proposed development inconsistent with the policies of the Coastal Act. The development remains in place without a permit, and unpermitted development constitutes a violation of the Coastal Act. Consequently, Commission staff recommends that the Commission find that unpermitted development constituting a Coastal Act violation has occurred on the property. If the Commission so finds, the Executive Director shall record a Notice of Violation in the Los Angeles County Recorder’s Office. Commission staff also recommends that the Commission approve Cease and Desist Order CCC-06-CD-02 and Restoration Order CCC-06-RO-02 (as described below), directing the Respondents to: 1) cease and desist from conducting or maintaining unpermitted development on the property; 2) remove all unpermitted development from the property, in accordance with the terms of the Orders; and 3) restore impacted areas of the property.

The property is one of twenty-eight contiguous lots developed with bluff top single-family residences located on a coastal bluff between the first public road, Paseo de la Playa, and the ocean. Torrance Beach, a public beach, is located immediately seaward of the property. The public can access Torrance Beach via public parking lots and vertical pedestrian accessways located approximately 500 feet north of the property at Torrance Beach Park and .75 of a mile south of the property in Palos Verdes Estates.

During a site visit to a neighboring property on July 6, 2001, Commission staff observed a shade structure at the toe of the coastal bluff on the property. On July 24, 2002, the Respondents submitted a CDP application, seeking after-the-fact authorization for the shade structure and a storage shed located within the shade structure. The application was so extremely incomplete that it was returned to the Respondents.

In December of 2002, upon further investigation, Commission staff determined that a walkway and additional structures had also been constructed on the property without authorization from a

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<sup>1</sup> For a fuller discussion of such development, see Section IV (A), *infra*.

CDP.<sup>2</sup> Commission staff sent a Notice of Violation letter to the Respondents on March 14, 2003, addressing the shade structure, walkway, and fence (which has since been determined to be permitted) on the property, and received a second incomplete permit application from the Respondents on April 28, 2003. Although the Respondents did finally complete the second permit application, they withdrew it before the December 2003 Commission meeting, where the Commission was scheduled to act on the matter. Consequently, Commission staff sent a second Notice of Violation letter on July 29, 2004.

The Respondents submitted a third incomplete permit application on August 12, 2004. Upon completion of this application, Commission staff scheduled the matter to be heard by the Commission at the Commission's February 2005 meeting. The hearing on the permit application was postponed, at the Respondents' request, and held during the June 7, 2005 meeting, where the Commission denied the application. Subsequently, the Respondents filed and withdrew a request for reconsideration.<sup>3</sup> Since that time, the Respondents have taken no action to resolve the violations on the property, and the development remains on the property. Consequently, additional enforcement action is now necessary.

On January 18, 2006, the Executive Director issued a Notice of Intent to Record a Notice of Violation and to Commence Cease and Desist and Restoration Order Proceedings (NOI) to the Respondents. Commission staff received a document entitled, "Statement of Defense" (SOD) and a specific, written objection to the recordation of a Notice of Violation from Respondents on February 7, 2006. Responses to the issues raised in the SOD are provided in Section H below. The objection to the recordation of the Notice of Violation satisfies the requirements of Coastal Act Section 30812, and, pursuant to Section 30812(c), a hearing on whether a Coastal Act violation has occurred is now required.

The cited activities undertaken on the property constitute development, as defined in Coastal Act Section 30106 and were undertaken without a CDP, in violation of Coastal Act Section 30600. Thus, the Commission has the authority, under Coastal Act Section 30810, to issue a cease and desist order in this matter. Furthermore, the unpermitted development is inconsistent with the policies of Chapter 3 of the Coastal Act, including Sections 30251 and 30253, and, if unabated, the violations will cause continuing resource damage, as defined in Section 13190 of the Commission's regulations. Consequently, the Commission has the authority, under Coastal Act Section 30811, to issue a restoration order in this matter. Additionally, upon a finding by the Commission that a Coastal Act violation has occurred, Coastal Act Section 30812 provides the Executive Director with the authority to record a Notice of Violation.

The Coastal Commission has jurisdiction to take enforcement action to remedy this violation because the property lies within the Coastal Zone. The property is located in the city of Torrance in Los Angeles County, an area not covered by a certified Local Coastal Program.

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<sup>2</sup> The additional unpermitted development was not present when Commission staff visited the property in 2001, but appears in aerial photographs of the property and surrounding areas taken on September 23, 2002.

<sup>3</sup> On August 12, 2005, the Respondents filed a petition for writ of mandate, challenging the denial.

## **II. HEARING PROCEDURES**

### **A. Notice of Violation**

The procedures for a hearing on whether or not a Coastal Act violation has occurred are set forth in Section 30812 of the Coastal Act. Section 30812(c) and (d) provide the following direction:

*(c) If the owner submits a timely objection to the proposed filing of the notice of violation, a public hearing shall be held at the next regularly scheduled commission meeting for which adequate public notice can be provided, at which the owner may present evidence to the commission why the notice of violation should not be recorded. The hearing may be postponed for cause for not more than 90 days after the date of the receipt of the objection to recordation of the notice of violation.*

*(d) If, after the commission has completed its hearing and the owner has been given the opportunity to present evidence, the commission finds that, based on substantial evidence, a violation has occurred, the executive director shall record the notice of violation in the office of each county recorder where all or part of the real property is located. If the commission finds that no violation has occurred, the executive director shall mail a clearance letter to the owner of the real property.*

The Commission shall determine, by a majority vote of those present and voting, whether a violation has occurred. Passage of a motion, per staff recommendation or as amended by the Commission, will result in the Executive Director's recordation of a Notice of Violation in the County Recorder's Office in Los Angeles County.

### **B. Cease and Desist and Restoration Orders**

The procedures for a hearing on a proposed Cease and Desist Order and Restoration Order are set forth in Section 13185 and 13195 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, Subchapter 8.

For a Cease and Desist and Restoration Order hearing, the Chair shall announce the matter and request that all alleged violators or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any person, other than the violator or its representative. Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator or his representative may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons, after which staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR Section 13185, 13186, and 13195, incorporating by reference Sections 13185, 13186 and 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist and Restoration Orders, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of two separate motions, corresponding to the Cease and Desist Order and the Restoration Order respectively, per staff recommendation or as amended by the Commission, will result in issuance of the Orders.

### **III. STAFF RECOMMENDATION**

#### **A. Notice of Violation**

##### **1. Motion**

*I move that the Commission find that a violation of the Coastal Act has occurred as described in the staff recommendation for CCC-06-NOV-01.*

##### **2. Staff Recommendation of Approval**

Staff recommends a **YES** vote. Passage of this motion will result in the Executive Director recording Notice of Violation No. CCC-06-NOV-01. The motion passes only by an affirmative vote of a majority of Commissioners present.

##### **3. Resolution That a Violation of the Coastal Act Has Occurred**

The Commission hereby finds that a violation of the Coastal Act has occurred, as described in the findings below, and adopts the findings set forth below on the grounds that development has occurred without a coastal development permit.

#### **B. Cease and Desist Order**

##### **1. Motion**

*I move that the Commission issue Cease and Desist Order No. CCC-06-CD-02 pursuant to the staff recommendation.*

##### **2. Recommendation of Approval**

Staff recommends a **YES** vote. Passage of this motion will result in the issuance of Cease and Desist Order CCC-06-CD-02. The motion passes only by an affirmative vote of the majority of Commissioners present.

**3. Resolution to Issue Cease and Desist Order**

The Commission hereby issues Cease and Desist Order No. CCC-06-CD-02, as set forth below, and adopts the findings set forth below on the grounds that development has occurred without a coastal development permit, in violation of the Coastal Act, and the requirements of the Order are necessary to ensure compliance with the Coastal Act.

**C. Restoration Order**

**1. Motion**

*I move that the Commission issue Restoration Order No. CCC-06-RO-02, pursuant to the staff recommendation.*

**2. Recommendation of Approval:**

Staff recommends a **YES** vote. Passage of this motion will result in the issuance of Restoration Order CCC-06-RO-02. The motion passes only by an affirmative vote of a majority of Commissioners present.

**3. Resolution to Issue Restoration Order:**

The Commission hereby issues Restoration Order number CCC-06-RO-02, as set forth below, and adopts the findings set forth below on the grounds that 1) development was conducted on the property without a coastal development permit, 2) the development is inconsistent with the Coastal Act, and 3) the development is causing continuing resource damage.

**IV. FINDINGS FOR CEASE AND DESIST ORDER CCC-06-CD-02 AND RESTORATION ORDER CCC-06-RO-02**

**A. Permit History**

On June 21, 1976, the South Coast Regional Conservation Commission approved, with conditions, CDP No. P-76-7342, authorizing the construction of a two-story single-family residence, detached four-car garage, arcade, swimming pool, and hot tub on the bluff top portion of the property (**Exhibit 2**). Condition Three of the permit required the owner of the property at that time to submit plans demonstrating that “[n]o portion of the structure, including decks and balconies,” would encroach into a twenty-five foot bluff setback area, clearly indicating the Commission’s concern about the adverse resource impacts of development too close to the bluff edge or bluff face. Not only does the unpermitted development at issue in these proceedings

extend well beyond the setback area, but it extends all the way down the bluff face to the toe of the bluff and to the sandy beach immediately seaward of the bluff.<sup>4</sup>

Development on other properties is irrelevant to this enforcement proceeding, which involves the failure of Respondents to obtain the required Coastal Development Permit for the development on their property. Even if the other development was relevant, which it clearly is not, such development is distinguishable from the unpermitted development at issue. Of the twenty-eight lots in the area, seventeen lots contain no bluff face development. Of the eleven lots that do contain development on the bluff face, only four lots contain development that was approved by the Commission. The remaining development was either constructed prior to the enactment of the Coastal Act and not subject to Coastal Act requirements, or is unpermitted and currently under investigation by Commission enforcement staff. Furthermore, Commission staff notes that the Commission has approved no shade structures at the toe of the bluff in the area.

The four permits authorizing bluff face development were approved between 1986 and 1995. Since then, the Commission has consistently taken the position that development on the bluff face seaward of the Paseo de la Playa is inconsistent with the resource protection policies of the Coastal Act and has even conditioned bluff top development on the provision of a twenty-five foot bluff setback. In addition, we note that the Commission approved only the bluff top portions of two subsequent permit applications, involving the Carey property (5-03-328) and the Conger property (5-01-018). The Commission imposed prior to issuance conditions on both permits requiring the applicants to revise the project descriptions to eliminate any proposed bluff face development, stating that the bluff face development was inconsistent with Coastal Act Sections 30251 and 30253. Most importantly, the Commission denied a permit application seeking authorization of bluff face development on the Respondents' own property (5-04-324), which is the subject of this proceeding.

Counsel for Respondents refers to some of the development nearby the Respondents' property. As noted above, this development is either authorized by older permits issued by the Commission, pre-Coastal, or the subject matter of pending enforcement investigations.<sup>5</sup>

## **B. Violation History**

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<sup>4</sup> At the time the CDP No. P-76-7342 was issued, the property was approximately 1.28 acres in size. On October 4, 1976, the Commission issued an administrative permit authorizing a lot line adjustment that split the property into a two lots, one of which is the .64-acre property at issue in this matter.

<sup>5</sup> The development cited by Respondents was approved under permits issued in 1986, 1991 and 1995, prior to the Commission's current stance of bluff face development. Moreover, the approved development is also distinguishable from the development on the Respondents' property. Even in these earlier permits, the permits were conditioned to minimize visual impacts, in recognition of the concerns for this area. For example, one permit referred to by Respondents (5-90-1041A3) was issued in 1991 and was approved for a stairway on the Campbell property. There, the Commission approved a narrow property line stairway, and again sited this to be as visually compatible as possible, by siting it along an existing wall to reduce visual impacts. The stairway was only approved as part of a bluff reconstruction and restoration that the owner was performing.

## **1. Description of Property**

The property at issue in this matter is a .64-acre lot, located at 437 Paseo de la Playa in Torrance, in Los Angeles County. The property is one of twenty-eight contiguous residential lots located on a relatively undisturbed coastal bluff, immediately south of the Los Angeles County Torrance Beach Park on the bluff between the first public road, Paseo de la Playa, and the ocean. The bluff top portions of all twenty-eight lots have been developed with single-family residences. The bluff face portions of some of the lots have been found to contain rare habitat for the endangered El Segundo Blue Butterfly (*Euphilotes Bernardino allyni* ).

Torrance Beach, the beach immediately seaward of the property, is a public beach. The property is located approximately 500 feet south of the Torrance Beach Park parking lot, which provides vertical public access for pedestrians to Torrance Beach. An additional public parking lot and vertical public beach access point is located in Palos Verdes Estates, approximately .75 mile south of the property.

The property contains a single family residence with detached garage, swimming pool, arcade, and hot tub. All of this development was constructed according to an existing Commission-approved permit, landward of a required twenty-five foot bluff setback area. However, an unpermitted sprinkler system and a four-foot wide, three-inch thick, 1,059 linear-foot concrete and flagstone walkway with wooden handrails, posts, and edges, which crisscross the bluff face seaward of the residence on the property, were constructed. In addition, an unpermitted thirteen-foot high, 910 square-foot shade structure; two-tier, 1,218 square foot concrete and flagstone patio; fire pit; storage locker; plastic sheeting; and concrete planters are located at the toe of the bluff on the property (**Exhibit 3a-d**).

## **2. Initial Violation Report and Administrative Attempts to Resolve Violations**

Commission staff first became aware that there were violations on the property during a site visit on July 6, 2001. During the site visit, Commission staff observed that a shade structure had been constructed at the toe of the coastal bluff on the property. No CDP had been obtained prior to construction of the shade structure. On July 24, 2002, the Respondents submitted a CDP application, seeking after-the-fact authorization for the shade structure and a storage shed located within the shade structure. The application was so extremely incomplete that it was returned to the Respondents.

In December of 2002, upon further investigation, Commission staff determined that a stairway and additional structures had also been constructed on the property without authorization from a CDP.<sup>6</sup> Commission staff sent a Notice of Violation letter to the Respondents on March 14, 2003, addressing the shade structure, walkway, and fence (which has since been determined to be permitted) on the property, and received a second incomplete permit application from the Respondents on April 28, 2003 (**Exhibit 4**). Although the Respondents did finally complete the

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<sup>6</sup> The additional unpermitted development was not present when Commission staff visited the property in 2001, but appears in aerial photographs of the property and surrounding areas taken on September 23, 2002.

second permit application, they withdrew it before the December 2003 Commission meeting, where the Commission was scheduled to act on the matter. Consequently, Commission staff sent a second Notice of Violation letter on July 29, 2004 (**Exhibit 5**). The Respondents submitted yet another incomplete permit application on August 12, 2004. Upon completion of this third application, Commission staff scheduled the matter to be heard by the Commission at the Commission's February 2005 meeting. The hearing on the permit application was postponed, at the Respondents' request, and held during the June 7, 2005 meeting, where the Commission denied the application. The permit findings, attached as **Exhibit 6**, provide a clear explanation of how the unpermitted development is inconsistent with the Coastal Act.

Subsequently, the Respondents filed a request for reconsideration, which they withdrew on October 1, 2005.<sup>7</sup> Since that time, the Respondents have taken no action to resolve the violations on the property, and consequently, additional enforcement action is now necessary.

**3. Notice of Intent to Record a Notice of Violation and to Commence Cease and Desist Order and Restoration Order Proceedings**

On January 18, 2006, the Executive Director issued an NOI to the Respondents (**Exhibit 7**). An SOD form was sent along with the NOI, affording the Respondents the opportunity to present defenses to the issuance of the orders. The NOI also provided the Respondents with the opportunity to specifically object, in writing, to the recordation of a Notice of Violation in this matter, as provided for in Coastal Act Section 30812. The NOI and the SOD form specified a twenty-day time period for submittal of an SOD and objection to the recordation of a Notice of Violation, as required under Section 13181(a) of the Commissions Regulations and Coastal Act Section 30812(b), respectively. The final date for submittal of the SOD and objection was February 7, 2006. Commission staff received an SOD and a specific, written objection to the recordation of a Notice of Violation from Respondents on February 7, 2006 (**Exhibit 8**). Responses to the issues raised in the SOD are provided in Section H below.

**C. BASIS FOR RECORDATION OF A NOTICE OF VIOLATION OF THE COASTAL ACT**

**1. Unpermitted Development Has Occurred**

Coastal Act Section 30812 authorizes the Executive Director to record a Notice of Violation if real property has been developed in violation of the Coastal Act. As explained below, unpermitted development constitutes a Coastal Act violation. The unpermitted development activities at issue were undertaken by the Respondents and include the construction of a walkway, irrigation system, shade structure, patio, fire pit, storage locker, plastic sheeting, and concrete planters on the face and at the toe of a coastal bluff on the property without a coastal development permit.

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<sup>7</sup> On August 12, 2005, the Respondents filed a petition for writ of mandate, challenging the denial.

The cited activities meet the definition of “development” set forth in Section 30106 of the Coastal Act:

*“Development” means, on land, in or under water, the placement of erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code, and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use (emphasis added)*

Section 30600 of the Coastal Act provides:

*(a) Except as provided in subdivision (e), and in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone, other than a facility subject to Section 25500, shall obtain a coastal development permit.*

Therefore, the cited activities undertaken on the property constitute development under the Coastal Act and require a CDP. The Respondents did not obtain a CDP for the development. In fact, the Commission denied the Respondents’ permit application, seeking after-the-fact authorization for the development. Therefore, the Commission finds that unpermitted development, as defined by Sections 30106 and 30600 of the Coastal Act, has occurred and a Notice of Violation may be recorded in this matter.

## **2. Requirements For the Recordation of a Notice of Violation Have Been Satisfied**

Coastal Act Section 30812(g) states:

*The executive director may not invoke the procedures of this section until all existing administrative methods for resolving the violation have been utilized and the property owner has been made aware of the potential for the recordation of a notice of violation. For purposes of this subdivision, existing methods for resolving the violation do not include the commencement of an administrative or judicial proceeding.*

After repeated attempts by Commission staff to resolve this matter administratively, the Respondents have failed to take action to remove the unpermitted development and restore the impacted areas of the property. On June 7, 2005, the Commission denied Respondents’ application for a CDP to authorize the cited development, finding it inconsistent with the policies of the Coastal Act. As noted above, Commission staff informed the Respondents of the potential for a Notice of Violation in letters dated March 14, 2003, and July 29, 2004, and the Executive Director notified the Respondents of his intent to record a Notice of Violation on January 18,

2006.<sup>8</sup> All existing administrative methods for resolving the violation have been exhausted, and the Respondents have been made aware of the potential for the recordation of a Notice of Violation as required by Coastal Act Section 30812(g). Development has occurred without the benefit of a CDP, warranting the recordation of a Notice of Violation under Coastal Act Section 30812(d). If the Respondents resolve the cited violations, and barring any additional violations, the Executive Director will, in accordance with Coastal Act Section 308129(f), mail a clearance letter to the Respondents and record a Notice of Rescission in the Los Angeles County Recorder's Office, indicating that the Notice of Violation is no longer valid. The Notice of Rescission shall have the same effect as a withdrawal or expungement under Section 405.61 of the Code of Civil Procedure.

**D. Description of Unpermitted Development**

The unpermitted development located on the face of and at the toe of a coastal bluff on the property includes the construction of a 1,059 linear-foot, four-foot wide, concrete and flagstone walkway with handrails, posts and edges; irrigation system; 910 square-foot; thirteen-foot high shade structure; 1218 square-foot, two-tier, concrete and flagstone patio; fire pit; storage locker; plastic sheeting on a permitted chain link fence; and concrete planters.

**E. Basis for Issuance Orders**

**1. Basis for Issuance of Cease and Desist Order**

The statutory authority for issuance of this Cease and Desist Order is provided in Coastal Act Section 30810, which states, in relevant part:

*(a) If the commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person ... to cease and desist.*

*(b) The cease and desist order may be subject to such terms and conditions as the commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material...*

As explained in Section C.1 above, the cited activities at issue in this matter clearly constitute development as defined in Coastal Act Section 30106 and, as such, are subject to the permit requirements provided in Coastal Act Section 30600(a).

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<sup>8</sup> Commission staff received a certified mail delivery receipt signed by Chris Bredesen for the March 14, 2003 Notice of Violation letter. Additionally, the Respondents submitted a specific, written objection to the recordation of a Notice of Violation with the SOD in response to the NOI. Thus, the Bredesens received notification of both the potential for the recordation of a Notice of Violation and the Executive Director's intention to record a Notice of Violation.

No CDP was obtained for the development on the property, as required under Coastal Act Section 30600(a). Consequently, the Commission is authorized to issue CCC-06-CD-02 pursuant to Section 30810(a)(1). The proposed Cease and Desist Order will direct the Respondents to ensure compliance with the Coastal Act by removing the unpermitted development and restoring the impacted areas.

## **2. Basis for Issuance of Restoration Order**

The statutory authority for issuance of this Restoration Order is provided for in Coastal Act Section 30811, which states, in relevant part:

*In addition to any other authority to order restoration, the commission... may, after a public hearing, order restoration of a site if it finds that [a.] the development has occurred without a coastal development permit from the commission..., [b.] the development is inconsistent with this division, and [c.] the development is causing continuing resource damage.*

### **a. Development Has Occurred Without a Coastal Development Permit**

As previously presented in Sections C.1. and E.1 of this report, Commission staff has verified, and the Respondents do not dispute, that the cited development on the property was conducted without a CDP.<sup>9</sup> The following paragraphs provide evidence that the unpermitted development is inconsistent with the Coastal Act and is causing continuing resource damage.

### **b. Unpermitted Development is Inconsistent with the Coastal Act**

The unpermitted development is inconsistent with the following resource protection policies of the Chapter 3 of the Coastal Act:

#### **i. Section 30251 – Protection of Scenic and Visual Qualities**

Coastal Act Section 30251 states the following:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.*

The property is one of twenty-eight contiguous lots developed with bluff top single-family residences. The bluff face is immediately landward of Torrance Beach, is relatively undeveloped, and is highly visible from the beach. The majority of the lots do not contain development on the bluff face, and the overall appearance of the bluff face is natural and

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<sup>9</sup> In fact, the Respondent has submitted three separate CDP applications seeking after-the-fact approval of the development, none of which were approved, thereby acknowledging that no CDP has been obtained for the development.

undeveloped. None of the twenty-eight lots contain a permitted shade structure. In fact, the bluff face development on eight of the lots is unpermitted, and Commission staff is currently investigating these violations.

Even with the above-mentioned exceptions, the bluff face is relatively undisturbed. The unpermitted development at this property has resulted in a visible intensification of use of the site as compared to its undeveloped state and the visible impacts are made more significant by the fact that the patio and shade structure are immediately adjacent to a heavily-used public beach. Public parking and pedestrian access to Torrance Beach is located just 500 feet to the north of the property and .75 of a mile to the south of the property. Intensified private development along the bluff face will adversely impact the character of the bluff and the views of the bluff from the beach in a way that is inconsistent with Sections 30251.

## ii. Section 30253 - Minimization of Adverse Impacts

Coastal Act Section 30253 states in relevant part:

*New development shall: ...*

*(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. (emphasis added) ...*

*(5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics are popular visitor destination points for recreational uses.*

The unpermitted development on the property is immediately adjacent to Torrance Beach, a popular destination point for recreational uses. The unpermitted development on the property is located on a coastal bluff. “Hardening” of coastal bluffs as a result of the placement of development on the bluff and between the bluff and the beach, decreases the amount of sand contributed to beach sand supply by the slowly eroding bluff.<sup>10</sup> Over time, this decreased sand supply can decrease the amount of beach that the public has to enjoy.<sup>11</sup> Furthermore, increased runoff from the impervious surfaces on the bluff face will impact the beach. These impacts will result in increased erosion of the beach. Therefore, the unpermitted development at the toe of a coastal bluff is inconsistent with Section 30251 because it contributes to beach erosion and does not protect Torrance Beach.

## c. Unpermitted Development is Causing Continuing Resource Damage

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<sup>10</sup> See Terchunian, A.V. 1988, *Permitting coastal armoring structures: Can seawalls and beaches coexist?* Journal of Coastal Research, Special Issue No. 4, pages 65-75; Department of Boating and Waterways and State Coastal Conservancy, 2002, *California Beach Restoration Study*.

<sup>11</sup> Although this bluff is not exposed to wave action, the bluff face is exposed to rain, which can dislodge sediment and wash it onto the beach.

The unpermitted development is causing continuing resource damage, as defined in Section 13190 of the Commission's regulations, which states:

*'Continuing', when used to describe 'resource damage', means such damage which continues to occur as of the date of issuance of the Restoration Order.*

*'Resource' means any resource which is afforded protection under the policies of Chapter 3 of the Coastal Act, including but not limited to public access, marine and other aquatic resources, environmentally sensitive wildlife habitat, and the visual quality of coastal areas.*

*'Damage' means any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development. (emphasis added)*

Because the unpermitted development remains on the property, the resource damage is "continuing" as required by Coastal Act Section 30811.

### **3. Provisions of CCC-06-CD-02 and CCC-06-RO-02**

The unpermitted development is not visually compatible with the rest of the relatively undisturbed bluff and adjacent beach, moves the line of private structures closer to the public beach and has adverse impacts to the public's views of the bluff from the beach. The unpermitted development does not minimize adverse impacts to natural landforms and will decrease the bluff's contribution to beach sand supply. The unpermitted development is therefore inconsistent with the resource protection policies of the Coastal Act. Issuance of the Orders is essential to resolving the violation because the unpermitted development was subject to a prior permit denial, is causing continuing resource damage, and the Respondents have not been willing to voluntarily resolve the violations.

### **F. California Environmental Quality Act (CEQA)**

The Commission finds that the issuance of Commission Cease and Desist Order CCC-06-CD-02 and Restoration Order CCC-06-RO-02, to compel removal of the unpermitted development and restoration of the property, is exempt from any applicable requirements of the California Environmental Quality Act (CEQA) of 1970 and will not have significant adverse effects on the environment, within the meaning of CEQA. The Cease and Desist Order and Restoration Order are exempt from the requirement of preparation of an Environmental Impact Report, based on Sections 15061(b)(2), 15307, 15308 and 15321 of the CEQA Guidelines.

### **G. Findings of Fact**

1. Chris G. Bredesen and Virginia C. Bredesen, as Trustees of the C.G. & V.C. Trust ("Respondents") are the owners of the property located at 437 Paseo de la Playa in Torrance, Los Angeles County. The property is identified by the Los Angeles County Assessor's Office as

APN 7512-003-022. The property is located within the Coastal Zone, in an area that is not covered by a certified Local Coastal Program.

2. Unpermitted development including construction of a walkway, irrigation system, shade structure, patio, fire pit, storage locker, plastic sheeting, and concrete planters was undertaken on the face and at the toe of a coastal bluff.

3. No CDP was applied for or obtained prior to the undertaking of this development, in violation of Coastal Act Section 30600(a). No exemption from the permit requirements of the Coastal Act applies to the unpermitted development.

4. The unpermitted development is inconsistent with the resource protection policies of the Coastal Act, including Sections 30251 and 30253.

5. The unpermitted development is causing continuing resource damage, within the meaning of Coastal Act Section 30811 and Section 13190 of the Commission's Regulations.

6. During a site visit on July 6, 2001, Commission staff observed a shade structure at the toe of the bluff on the property.

7. On December 18, 2002, Commission staff reviewed aerial photographs of the property and surrounding area and observed additional unpermitted development on the property.

8. On July 24, 2002, the Respondents submitted an extremely incomplete CDP application, seeking to retain the shade structure and a storage shed. The incomplete application was returned to the Respondents.

9. An initial Notice of Violation letter was sent to the Respondents on March 14, 2003, requesting the submittal of a CDP application to remove the unpermitted development and restore impacted coastal bluff and sandy beach areas, and notifying the Respondents of the potential for the recordation of a Notice of Violation regarding the Coastal Act violations.

10. On April 28, 2003, the Respondents submitted an incomplete CDP application to retain the shade structure. The Respondents completed the application, and the Commission was scheduled to take action on it at the December 2003 Commission meeting. The Respondents withdrew the application before the December Commission meeting.

11. On July 29, 2004, Commission staff sent a second Notice of Violation letter to the Respondents, again requesting resolution of the Coastal Act violations on the property and again notifying the Respondents of the potential for the recordation of a Notice of Violation with regards to the Coastal Act violations.

12. The Respondents submitted an incomplete CDP application (No. 5-04-324) addressing the cited unpermitted development on August 12, 2004. The application was completed on November 3, 2004.

13. On June 7, 2005, the Commission held a public hearing on the application, and based on the hearing, denied CDP Application No. 5-04-324. The Respondents subsequently submitted a request for reconsideration and withdrew it.

14. On January 17, 2006, the Executive Director issued a Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings and to Record a Notice of Violation (NOI), addressing the unpermitted development on the property. A response to the NOI, using the Statement of Defense (SOD) form sent to the Respondents with the NOI, was due on or before February 7, 2006.

15. On February 7, 2006, Commission staff received a document entitled, "Statement of Defense" and a specific, written objection to the recordation of a Notice of Violation.

16. There is substantial evidence that a Coastal Act violation has occurred.

17. The unpermitted development listed above in #2 persists on the property.

#### **H. Violators' Defenses and Commission's Response**

Counsel for the Respondents submitted a document entitled "Statement of Defense Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings California Coastal Commission File No. V-5-01-037", on behalf of the Respondents, which was received by the Commission staff on February 7, 2006 and is included as Exhibit 8. This purported Statement of Defense did not address any of the five topics listed on the Statement of Defense form, set forth in Appendix A to Subchapter 8 of the Commission's regulations, to be used in these proceedings, and, in fact, largely does not present identifiable defenses or respond to the issues relevant to an enforcement action, such as whether development occurred on the property without a CDP. The "SOD" instead requests unrelated permit files for other properties, the administrative record that is being prepared for litigation on a permit action, and the violation file for these proceedings. Commission staff notes that the only information requested that is relevant to this enforcement proceeding is the violation file, and all materials contained in the violation file upon which Commission staff based the recommendations for enforcement action in this matter are contained in this report and its attachments.

The "SOD" submitted by Counsel for the Respondents does not specify which facts from the NOI the Respondents admit, deny, or have no personal knowledge of, does not present any affirmative defenses, and does not contain facts or materials to support any of the Respondents' statements. (There are only two statements in the "SOD" that could reasonably be construed as denials.) Despite this, in an attempt to respond to Respondents' potential concerns, Commission staff has attempted to discern the meaning of the statements and has responded to them below.

First, the Respondents assert that "it was obvious" that a pre-existing path was present on the property when the Respondents purchased it. The "SOD" contains no facts, such as photographs, to support this assertion. Second, the Respondents assert that a cease and desist

order is unnecessary because the unpermitted development is causing no “continuing environmental harm”. Environmental harm is not an element of Coastal Act Section 30810 and not required for the issuance of a cease and desist order. However, Commission staff assumes that counsel for the Respondents intended to assert that the unpermitted development was not causing “continuing resource damage”, which is an element of Coastal Act Section 30811 and required for the issuance of a restoration order, not a cease and desist order. Again, the “SOD” does not present any evidence to support this assertion. Section 2 of this report clearly specifies the continuing resource damages occurring on the property as a result of the unpermitted development. However, in an exercise of caution, Commission staff responds to both of the assertions below. (See Respondents’ Defenses 6 and 8, infra)

Counsel for the Respondents also mentions development on other properties. This discussion is irrelevant to this Chapter 9 enforcement proceeding involving development on the Respondents’ property, which lacks any permit under the Coastal Act. No evidence is provided to refute the allegations made in the NOI with respect to the unpermitted development and continuing resource damage on the Respondents’ property.

Counsel for the Respondents also attaches a petition for writ of mandate to the “SOD” and purports to incorporate the entire document by reference, without specifying which portions are relevant to this proceeding. In fact, no portion of the petition is relevant to this enforcement proceeding. It was filed by the Respondents to initiate litigation over a permit action, and the assertions made therein do not address the elements of Coastal Act Sections 30810 and 30811. Furthermore, as stated below, the Respondents are the Petitioners in the permit litigation and, therefore, the petition does not contain defenses, only claims against the Commission challenging a permit action. Commission staff again notes that the issues to be addressed in a permit action, and in any subsequent litigation over a permit action, are different from those relevant in an enforcement action regarding development without a permit. However, in yet another exercise of caution, Commission staff has tried to deduce what claims in the petition could be construed to be defenses to an enforcement action and has responded to those claims below.

**1. Respondents’ Defense:**

*The evidence which I would offer in support of the Bredesens is all of the evidence contained in the administrative record for California Coastal Commission Permit Application No. 5-04-324... I do not yet have a copy of the administrative record and I am handicapped in making a full response to your notice of intent...*

**Commission’s Response:**

Receipt of the administrative record for CDP Application No. 5-04-324 is not required for the Respondents to receive a fair hearing in this matter. The administrative record is prepared for litigation matters, not enforcement proceedings. Therefore, although Commission staff is preparing an administrative record of the permit hearing involving the Respondents, due to pending litigation, that record is not required for the Respondents to receive a fair hearing in this

matter. Moreover, the permit action raises many issues which are not germane to this enforcement action.

The issues relevant to this proceeding pertain to the elements of Coastal Act Sections 30810 and 30811; namely, where 1) development has occurred without a CDP, 2) whether the unpermitted development is inconsistent with the policies of Chapter 3 of the Coastal Act, and 3) whether the unpermitted development is causing continuing resource damage as defined in Section 13190 of the Commission's regulations. The facts relevant to these issues are fully addressed in this report and its analysis, not anything contained in the administrative record prepared for litigation on a separate permit action, provides the basis for the recommended enforcement action in this matter.

## **2. Respondents's Defense:**

*Further I intend also to submit all of the permit files and any other information possessed by the Commission in the following cases:*

*A-12-2-73-2419,  
Permit No. 5-85-755 (Briles),  
Permit No. 5-90-1041A2 (Campbell),  
Permits P-7266 and A-80-6753, and  
Permit No. 5-90-1079 (Wright).*

## **Commission's Response:**

This statement is not couched as a defense. Moreover, this was the first time these records had been requested, even impliedly, so the fact that Respondents did not yet have these records could not be a defense.

Furthermore, Permit No. A-12-20-73-2419 authorized the construction of the chain link fence between a number of properties, including the Respondents' property, and Torrance Beach. The other permit files correspond to development at completely different properties. In fact, CDPs No. P-7266 and A-80-6753 (Bacon) pertain solely to bluff top development; the other development on the property is located on the bluff face portion of that property, is not covered by the permit, and is, in fact unpermitted and under investigation by Commission enforcement staff. None of these permits involve the same situation as this matter and should not affect the Commission's decision with respect to the Respondents' property and these enforcement proceedings. Moreover, the Commission may take an action in this proceeding that is supported by the facts and the applicable law, and is not bound here by any decisions made in the past regarding other development on other properties. Other permits and properties are clearly not relevant in an enforcement proceeding regarding the unpermitted development on the Respondents' property. As noted above, the issues in the enforcement hearing relate solely to the elements of Coastal Act Sections 30810 and 30811.

The Respondents cited CDPs No. A-12-2-73-2419, 5-85-755, and 5-90-1041A2 in October 30, 2004, in the project description submitted as part of CDP application No. 5-04-324. The other permit files listed above were cited in the Staff Report on CDP application No. 5-04-324, dated January 27, 2005. Therefore, Respondents knew of the existence of these files and had ample time to request them since October 2004 and/or January 2005. However, these files were not requested by the Respondents until February 7, 2006. As noted above, these files are irrelevant to the matter at issue in these proceedings and were not requested in a timely manner. Therefore, although Commission staff, as a courtesy to the Respondents, has requested these files and will provide public documents contained in the files to the Respondents when they become available, this request does not warrant any delay of these proceedings. Commission staff again notes that files for other properties are not relevant at all to enforcement actions involving the Respondents' property.

**3. Respondents' Defense:**

*Finally, I request that you transmit to me immediately all of the evidence which the Executive Director has collected in connection with its Case No. V-5-01-037, including all notes, letters, writings, reports, photographs or other documents which you may possess. I am unable to fully respond to the Notice of Intent until I have seen such materials.*

**Commission's Response:**

Commission staff notes that although Commission staff first sent a Notice of Violation letter to the Respondents on March 14, 2003, almost 3 years ago, followed by a Notice of Violation letter on July 29, 2004 and a Notice of Intent on January 26, 2006. At no time until this SOD submittal were these documents requested by the Respondents. Again, the only elements relevant to these enforcement proceedings are the elements set forth in Coastal Act Sections 30810 and 30811. The information regarding these elements, upon which Commission staff based the recommendations for enforcement action in this matter, is contained in this report and its attachments.

**4. Respondents' Defense:**

*I request that you set no hearing in this matter until the administrative record has been delivered to me along with the materials which I have requested above... Setting a hearing before you have delivered such documents would deprive the Bredesens of a fair hearing.*

**Commission's Response:**

See Responses to Defenses No. 2 and 3 above. Again, the record for this enforcement proceeding is what is relevant. Counsel for Respondents would have us take no enforcement action at all until such time as the administrative record being prepared in a separate proceeding, in which he has sued the Commission on behalf of the Respondents, is completed. This is not what is intended under Chapter 9 of the Coastal Act and if followed, would greatly and unnecessarily delay this enforcement action.

**5. Respondents' Defense:**

*The Bredesens spent more than \$80,000 on landscape design and engineering to satisfy requests made of the Bredesens by Coastal [Commission] staff.*

**Commission's Response:**

The costs mentioned above were voluntarily incurred by the Respondents, and the amount of money contributed to development design is not a factor in Commission permit decision-making, much less in an enforcement proceeding. At no time did nor could Commission staff guarantee that the Respondents' permit application would be approved upon submittal of landscape design and engineering documents. This is a determination that falls solely within the discretion of the Commission itself, not Commission staff. The Commission found that notwithstanding this work, the proposed development was inconsistent with the resource protection policies of the Coastal Act.

**6. Respondents' Defense:**

*On the Bredesen property at the time that it was purchased, it was obvious that the former occupants of the property had gone from the home to the beach on the slope of the property although no engineered path had been constructed.*

**Commission's Response:**

The Respondents have not provided any evidence that of a pre-existing trail on the property. They also have not submitted a vested rights application for any development on the property and, therefore, cannot have established a legal vested right to the pathway. Furthermore, even if a pre-existing trail on the bluff face existed, replacing it with a concrete and flagstone walkway is a "substantial change" as defined in Coastal Act Section 30608, and, pursuant to 30608, would require a CDP even if a pre-Coastal path had been proven to exist.

**7. Respondents' Defense:**

*[The SOD lists development on completely different properties that the Commission approved or that predates the Coastal Act] ...despite prior determinations that other more obvious and less carefully designed plans were consistent with Chapter 3 policies of the Coastal Act, the Commission capriciously and arbitrarily denied the [Respondents'] application to build a path.*

**Commission's Response:**

Again, development on other properties is irrelevant to this enforcement proceeding. The issues relevant to this proceeding pertain to the elements of Coastal Act Sections 30810 and 30811; namely, 1) has development occurred without a CDP, 2) is the unpermitted development

inconsistent with the policies of Chapter 3 of the Coastal Act, and 3) is the unpermitted development causing continuing resource damage as defined in Section 13190 of the Commission's regulations. However, it is worth noting that the development listed in the SOD is distinguishable from the unpermitted development on the Respondents' property.

**Approved Development:** As stated above, development on other properties is irrelevant to this enforcement proceeding, which involves the failure of Respondents to obtain the required Coastal Development Permit for the development on their property. Even if the other development was relevant, which it clearly is not, such development is distinguishable from the unpermitted development at issue. Of the twenty-eight lots in the area, only four lots contain development that was approved by the Commission. The remaining development was either constructed prior to the enactment of the Coastal Act and not subject to Coastal Act requirements, or is unpermitted and currently under investigation by Commission enforcement staff. Furthermore, Commission staff notes that the Commission has approved no shade structures at the toe of the bluff in the area.

The four permits authorizing bluff face development were approved between 1986 and 1995. Since then, the Commission has consistently taken the position that development on the bluff face seaward of the Paseo de la Playa is inconsistent with the resource protection policies of the Coastal Act and has even conditioned bluff top development on the provision of a twenty-five foot bluff setback. In addition, we note that the Commission has denied applications or rejected portions of applications for bluff face development on the Carey property (5-03-328), the Conger property (5-01-018), and most importantly the Respondents' own property (5-04-324), which is the subject of this proceeding. Moreover, counsel for Respondents raises the issue of some of the development nearby this property. As noted above, these are either authorized by older permits issued by the Commission, or are the subject matter of pending enforcement investigations.<sup>12</sup>

**Pre-Coastal Development:** As noted above, the development on other properties mentioned in the SOD is irrelevant to this enforcement action regarding the failure to obtain the required Coastal Development Permit for the development on Respondents' property. Moreover, development that predates the Coastal Act is not subject to Coastal Act permitting requirements and, therefore, the Commission has not evaluated the development under Chapter 3 policies or Coastal Act enforcement procedures, as is required in this proceeding regarding development placed after enactment of the Coastal Act. The fact that development predates the Coastal Act in

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<sup>12</sup> The development cited by Respondents was approved under permits issued in 1986, 1991 and 1995, prior to the Commission's current stance of bluff face development. Moreover, the approved development is also distinguishable from the development on the Respondents' property. Even in these earlier permits, the permits were conditioned to minimize visual impacts, in recognition of the concerns for this area. For example, one permit referred to by Respondents (5-90-1041A3) was issued in 1991 and was approved for a stairway on the Campbell property. There, the Commission approved a narrow property line stairway, and again sited this to be as visually compatible as possible, by siting it along an existing wall to reduce visual impacts, and was only approved as part of a bluff reconstruction and restoration that the owners was performing.

no way implies that the Commission would approve the development if it were not pre-existing and subject to the Coastal Act.

**Unpermitted Development:** Counsel for the Respondent also implies that all development present in the area is somehow legal. Counsel for Respondent fails to mention that there is other development on the bluff face and at the toe of the bluff that was conducted without a CDP. In fact, eight properties out of the twenty-eight contiguous lots contain unpermitted bluff face development. In fact, Commission enforcement staff is currently investigating these as violations.

Regardless of the results of these investigations, the Commission has the statutory right to enforce the Coastal Act with its cease and desist order and restoration order powers, pursuant to Coastal Act Sections 30810 and 30811 with regards to the development on the Respondents' property.

**8. Respondents' Defense:**

*To now order the Bredesens to remove what they have challenged the denial of is premature and unnecessary. No continuing environmental harm is occurring. All of the development which presently exists had been completed at the time that the Bredesens received their first [Notice of Violation letter]. There is no basis for the Commission to issue a cease and desist order as the Bredesens have ceased and desisted performing any development on the property...*

**Commission's Response:**

The Respondents did not apply for nor obtain a CDP prior to construction of the development that is the subject of this enforcement action, as is required by the Coastal Act. Yet they constructed the development anyway. Moreover, after they did apply for a permit, after a full public hearing on the matter, the Commission denied the Respondents' permit application seeking after-the-fact authorization for the development. Therefore, the development is unpermitted. As explained above in Section IV.E.2. above, the unpermitted development is inconsistent with Coastal Act Sections 30251 and 30253 and is causing continuing resource damage. The damage to coastal resources that exists as a result of the unpermitted development includes: impacts to scenic resources and increased beach erosion from decreased contribution to sand supply and runoff from impervious surfaces on the bluff face. Because of the ongoing damage to resources, it is inadvisable to delay removal and restoration for a significant period of time (potentially several years) for litigation. In fact, the Respondents have not demonstrated a justification to do so.

In fact, whether or not the unpermitted development is causing any harm, the Commission has the authority to order its removal under Section 30810 of the Coastal Act, solely on the basis that it is unpermitted development. The fact that the Respondents are challenging the permit denial in court shows that they are not willing to voluntarily remove the unpermitted development and restore impacted areas. Thus, a cease and desist order is necessary in this matter to resolve the

violations. However, as explained above, the unpermitted development is inconsistent with Coastal Act Sections 30251 and 30253 and is causing continuing resource damage.

**9. Respondents' Defense:**

*The Bredesens reserve the right to amend, supplement or modify this statement of defense at any time up to and including the date of any hearing which may be held on any proposed cease and deist or restoration orders.*

**Commission's Response:**

The court in Bohn v. Watson held the following:

*It was never contemplated that a party to an administrative hearing should withhold any defense then available to him or make only a perfunctory or 'skeleton' showing in the hearing... The rule compelling a party to present all legitimate issues before the administrative tribunal is required... to preserve the integrity of the proceedings before that body and to endow them with a dignity beyond that of a mere shadow-play.*  
130 Cal.App.2d 24 at 37 (1954).

The Commission's cease and desist hearings are "quasi-judicial." Thus, if the Commission is to make findings of fact and conclusions at law in the form of an adopted Staff Report, the Respondents must inform the Commission, precisely and in writing, which defenses they wish the Commission to consider. Under the applicable regulations governing Coastal Act enforcement proceedings, this is done through the use of the SOD, which allows for Commission review of defenses and evidence prior to the hearing on the matter (See, e.g., *Horack v. Franchise Tax Board* (1971) 18 Cal.App.3d 363, 368) ("Where administrative machinery exists for resolution of differences, such procedures must be "fully utilized and exhausted"). The Respondents submitted an SOD in a timely manner. Thus, Commission staff assumes that all relevant information that could reasonably have been obtained at that time was presented in the SOD.

**10. "Defenses" Raised in the Petition for Writ of Mandate**

The Respondents attached a copy of the Petition for Writ of Mandate, filed on August 12, 2005, to the SOD and attempted to incorporate the allegations raised in the Petition by reference. The Petition raised a number of issues that are not germane to this enforcement proceeding, but Commission staff, in an excess of caution, have parsed through the petition, attempted to identify any relevant issues, and have identified and responded to the relevant issues below. Commission staff notes that these issues were not presented as "defenses" at all by Respondents since they were contained in a petition filed by the Respondents (therein referred to as "PETITIONERS") attached to the SOD form with no analysis or attempt to correlate the petition to the SOD or the Coastal Act enforcement process. However, as a courtesy, Commission staff has attempted to estimate which of the issues raised in the petition could, had they been submitted as "defenses"

in accordance with the Commission's regulations, possibly be construed as "defenses" for the purpose of this staff report and Coastal Act proceeding.

Regardless of whether the unpermitted development is inconsistent with these Coastal Act sections, as noted herein, the Commission has the authority to order its removal under Section 30810 of the Coastal Act, solely on the basis that it is unpermitted development.

**a. Respondents' Defenses With Regards to Coastal Act Section 30251:**

...PETITIONERS' Property is not a highly scenic area...

*...none of the improvements proposed by PETITIONERS interfere with the view enjoyed by the public from the public street or any other public location to the ocean...*

*...the scenic appearance of the PETITIONERS' Property from the beach is of the fence...*

*...there is no evidence that such improvements are not consistent with the scenic and visual quality of the area...*

**Commissions' Response:**

Coastal Act Section 30251 states:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.*

This Coastal Act Section, pertaining to "coastal areas" and "views along the ocean and scenic coastal areas", is relevant to the property at issue. The property is located immediately adjacent to the beach and ocean, making it a coastal area. In addition, the bluff is relatively undisturbed and is essential to the character of the heavily-used Torrance beach. The unpermitted development is not visually compatible with the surrounding beach and coastal bluff. Also, as explained in this report, the unpermitted development was not sited or designed to protect views and was not undertaken in a way that minimized landform alteration. (See discussion in Section IV.E.2.b, *infra*)

The Respondents state that the unpermitted development does not affect views from the public street to the ocean. They fail, however, to address the views of the beach and bluff from the beach, which are the views at issue in this matter. The unpermitted development does in fact interfere with the views of the beach and bluff area seen by public visiting Torrance Beach.

The Respondents state that only the fence and not the unpermitted development can be seen from the beach. The Respondents have covered the chain link fence, located between the property and

Torrance Beach, with black plastic sheeting, presumably to block views of the unpermitted development through the fence. The plastic sheeting covering the fence is both unpermitted and visible from the beach (as well as being hazardous to marine life and incompatible with the character of the surrounding area). Furthermore, photographs taken by Commission staff from the beach clearly show the unpermitted development and indicate that the unpermitted development is indeed visible from the public beach (See Exhibits 3 c, 3d). Even the Respondents' October 30, 2004 project description states that the chain link fence is 6 feet high. In fact, the shade structure is 13 feet high and located up the toe of the bluff from the fence. Additionally, the walkway is located on the bluff face above the fence and is clearly visible.

**b. Respondents' Defenses With Regards to Coastal Act Section 30253:**

*...PETITIONERS' Property is not in a special community or neighborhood as described in Public Resources Code 30253(5)...*

*... even if PETITIONERS' Property were in a special community or neighborhood, the neighborhood has many other homes with improvements substantially similar to the proposed by PETITIONERS and PETITIONERS' improvements would be compatible with the character of the neighborhood...*

*...the slope on PETITIONERS' Property is not a cliff or a bluff but a sandy slope.*

*... the alterations made to the slope on the PETITIONERS' Property do not constitute a substantial alteration of the natural landforms...*

*...there was no evidence that any significant amount of sand was contributed to the local shore line sand supply from the slope on PETITIONERS' Property or that the PETITIONERS' improvements would interfere in any way with the local shoreline sand supply...*

**Commission's Response:**

Coastal Act Section 30253 states:

*New development shall:*

*(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

*(5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.*

As stated previously in this report, the unpermitted development on the property is immediately adjacent to Torrance Beach, a public, Los Angeles County beach that is a popular destination point for recreational uses. The bluff is relatively undisturbed. Thus, the character of the neighborhood is natural and undeveloped, and not defined by the few lots that contain development, as the Respondents assert.

The Respondents label the coastal bluff on the property a slope. The coastal bluff at issue clearly meets the definitions of “coastal” and “bluff” as defined in the American Geological Institute’s *Glossary of Geology*, which is the standard source for definitions of geologic terms. The Commission’s geologist responded to this issue on pages 11-13 of the staff report for CDP application No. 5-04-324, which is incorporated herein by reference (**Exhibit 6**).

The unpermitted development on the property is located on a coastal bluff, which, according to a report submitted by the Respondents’ coastal engineer in November 2004, is comprised of “silty sand, San Pedro sand, pebbles, and man-placed sand (fill)”. “Hardening” of coastal bluffs as a result of the placement of development on the bluff and between the bluff and the beach, decreases the amount of sand contributed to beach sand supply by the slowly eroding bluff. Over time, this decreased sand supply can decrease the amount of beach that the public has to enjoy. This concept is an accepted aspect of coastal processes and, accordingly, Commission staff provided references in the staff report on the permit denial to documents explaining bluff hardening. Furthermore, increased runoff from the impervious surface on the bluff face will impact the beach. These impacts will result in increased erosion of the beach. Therefore, the unpermitted development at the toe of a coastal bluff is inconsistent with Section 30253 because it does not protect Torrance Beach.

The Respondents assert that the unpermitted development does not alter natural landforms. Commission staff notes, however, that the walkway was constructed on the face of a coastal bluff and that development at the toe of the bluff changes the landform. However, Coastal Act Section 30253(2) prohibits development that contributes significantly to erosion. Regardless of whether you identify it as a bluff or a sandy slope, the development at issue will contribute significantly to erosion of the beach from decreased sand supply and increased runoff from impervious surfaces.

Staff recommends that the Commission issue the following Cease and Desist and Restoration Orders to the Respondents:

**CEASE AND DESIST ORDER CCC-06-CD-02, BREDESEN**

Pursuant to its authority under Public Resource Code Section 30810, the California Coastal Commission hereby orders and authorizes Chris G. Bredesen and Virginia C. Bredesen, as Trustees of the C.G. and V.C. Bredesen Trust, (hereinafter referred to as “Respondents”) to:

1. Cease and desist from engaging in any further development on the property identified by Los Angeles County as Assessor’s Parcel Number 7512-003-022 (hereinafter referred to as “the property”).
2. Cease and desist from maintaining unpermitted development on the property.
3. Take all steps necessary to ensure compliance with the Coastal Act including: removal of all unpermitted development from the property and restoration of all areas impacted from the unpermitted development and/or from its removal, according to the following terms and conditions:

**I. Submittal of Removal and Restoration Plan**

- a. Within sixty days of issuance of this Order, Respondents shall submit, pursuant to Section V of this Order, for the review and approval of the Executive Director, two sets of a Removal and Restoration Plan, prepared by a licensed civil engineer or a qualified restoration ecologist or resource specialist, with credentials acceptable to the Executive Director. The plan shall provide for the removal of all unpermitted development from the property including the 1,059 linear-foot, four-foot wide, concrete and flagstone walkway with handrails, posts and edges; irrigation system; 910 square-foot; thirteen-foot high shade structure; 1218 square-foot, two-tier, concrete and flagstone patio; fire pit; storage locker; plastic sheeting covering the permitted chain link fence, and concrete planters on the face and at the toe of a coastal bluff.
- b. The Removal and Restoration Plan shall include the following provisions regarding the removal of unpermitted development:
  - a. A detailed description of proposed removal activities.
  - b. A timetable for removal.
  - c. Disposal site for removed development. The site must be a licensed disposal facility located outside of the Coastal Zone. Any hazardous materials must be transported to a licensed hazardous waste disposal facility.
  - d. If mechanized equipment is used, the following information shall be provided:

- i. Type of mechanized equipment required for removal activities;
  - ii. Length of time equipment must be used;
  - iii. Routes utilized to bring equipment to and from the property;
  - iv. Storage location for equipment when not in use during removal process;
  - v. Hours of operation of mechanized equipment;
  - vi. Contingency plan in case of a spill of fuel or other hazardous release from use of mechanized equipment that addresses clean-up and disposal of the hazardous materials and water quality concerns;
  - vii. Measures to be taken to protect water quality.
- c. The Removal and Restoration Plan shall also include a grading plan to restore the face and toe of the bluff where unpermitted grading or disturbance has occurred or where the slope of the bluff was impacted by removal of development pursuant to this Order. Disturbed or graded areas of the bluff shall be restored to match the existing topography of the immediately adjacent undisturbed bluff slope areas.
- d. The Removal and Restoration Plan shall also include a revegetation and erosion control plan to revegetate the bluff on the property where grading and/or vegetation removal has occurred or occurs as a result of removal of development pursuant to this Order. The revegetation and erosion control plan shall include the following criteria:
  - i. An interim erosion control plan that provides for temporary erosion control measures such as geofabrics, silt fencing, sandbag barriers, or other measures to control erosion until revegetation of the restored slope is completed. These erosion control measures shall be required on the project site prior to and concurrent with any grading operations and shall be maintained throughout the process to minimize erosion and sediment to runoff waters during construction. All sediment shall be removed to an appropriate disposal site, approved by the Executive Director, either outside the coastal zone or to a site within the coastal zone permitted to receive fill.
  - ii. A revegetation program prepared by a qualified restoration ecologist or resource specialist, with credentials acceptable to the Executive Director, which 1) utilizes native species of coastal bluff scrub vegetation, including

coast buckwheat (*Erigonum parvifolium*), 2) is consistent with the surrounding native plant community, and 3) includes indicators to be used in monitoring reports to establish the level of success of revegetation, including but not limited to the following:

1. 80% survival of container plants
  2. 75% ground coverage by annual non-native species
  3. No more than 25% bare ground
  4. No more than 15% cover by annual non-native species
  5. 0% cover of perennial non-native species
- e. A monitoring and maintenance methodology that includes the following provisions:
- i. Respondents agree to submit, on an annual basis for a period of five years (no later than December 31<sup>st</sup> of each year) a written report, for the review and approval of the Executive Director, prepared by a qualified resource specialist, evaluating compliance with the approved Removal and Restoration Plan. The annual reports shall include further recommendations and requirements for additional restoration activities in order for the project to meet the objectives of the Removal and Restoration Plan. These reports shall also include photographs taken annually from the same pre-designated locations (annotated to a copy of the site plans) indicating the progress of recovery in the restoration areas.
  - ii. At the end of the five-year period, Respondents agree to submit a final detailed report prepared by a qualified resource specialist for the review and approval of the Executive Director. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the approved Removal and Restoration Plan, Respondents agree to submit a revised or supplemental plan to compensate for those portions of the original program that were not successful. The Executive Director will determine if the revised or supplemental restoration plan must be processed as a CDP, a new Restoration Order, or a modification of this Order.
- f. If the Executive Director determines that any modifications or additions to the submitted Removal and Restoration Plan are necessary, he shall notify Respondents. Respondents shall complete requested modifications and resubmit the Removal and Restoration Plan for approval within 10 days of the notification.

## II. Removal and Restoration

- a. Within thirty days after approval of the Removal and Restoration Plan by the Executive Director, Respondents shall:

- i. Remove all unpermitted development, including the 1,059 linear-foot, four-foot wide, concrete and flagstone walkway with handrails, posts and edges; irrigation system; 910 square-foot; thirteen-foot high shade structure; 1218 square-foot, two-tier, concrete and flagstone patio; fire pit; storage locker; plastic sheeting, and concrete planters on the face and at the toe of a coastal bluff.
  - ii. Complete all restorative grading consistent with the approved Removal and Restoration Plan.
  - iii. Revegetate all disturbed and graded areas of the bluff slope consistent with the approved Removal and Restoration Plan.
- b. Within sixty days after approval of the Removal and Restoration Plan by the Executive Director, Commission staff will conduct a site inspection to confirm compliance with the terms and conditions of the order.
- c. Other than those areas subject to restoration activities, the areas of the property and surrounding areas currently undisturbed shall not be disturbed by activities required by this Order. Prior to initiation of any activities resulting in the physical alteration of the property, the disturbance boundary shall be physically delineated in the field using temporary measures such as stakes and colored tape.
- d. Within thirty days of the implementation of the Removal and Restoration Plan, the Respondents shall submit to the Executive Director a report documenting the project's completion. The report shall include photographs that clearly show the entire bluff area and a statement from a qualified restoration ecologist or resource specialist, indicating that the Removal and Restoration Plan has been implemented according to this Order.

### III. Monitoring

Respondents will monitor restoration of the bluff on the property according to Section I.d of this Order. All monitoring documents shall be submitted according to Section V. of this Order.

### **I. Persons Subject to the Order**

Persons subject to this Cease and Desist Order are Respondents, Respondents' agents, contractors and employees, and any persons acting in concert with any of the foregoing.

### **II. Identification of the Property**

The property that is subject to this Order is located at 437 Paseo de la Playa in Torrance, Los Angeles County and identified by the Los Angeles County Assessor's Office as APN 7512-003-022.

### **III. Description of Unpermitted Development**

Unpermitted development includes unpermitted construction of a walkway, irrigation system, shade structure, patio, fire pit, storage locker, plastic sheeting, and concrete planters on the face and at the toe of a coastal bluff.

### **IV. Commission Jurisdiction and Authority to Act**

The Commission has jurisdiction over this matter, as the property at issue is located within the Coastal Zone and in an area not covered by a certified Local Coastal Plan. The Commission is issuing this Order pursuant to its authority under Coastal Act Section 30810.

### **V. Submittal of Documents**

All documents submitted pursuant to this Order must be sent to:

California Coastal Commission  
Attn: Christine Chestnut  
45 Fremont St., Suite 2000  
San Francisco, CA 94105-2219

With a copy of all documents to:  
California Coastal Commission  
Attn: Pat Veasart  
89 S. California Street, Suite 200  
Ventura, CA 93001-2801

### **VI. Effective Date and Terms of the Order**

The effective date of the Order is the date of approval by the Commission. The Order shall remain in effect permanently unless and until modified or rescinded by the Commission.

### **VII. Findings**

The Order is issued on the basis of the findings adopted by the Commission at the March 2006 hearing, as set forth in the attached document entitled "Staff Report and Findings for Notice of Violation and Cease and Desist Order and Restoration Order".

### **VIII. Compliance Obligation**

Strict compliance with the Order by all parties subject thereto is required. Failure to comply strictly with any term or condition of the Order including any deadline contained in the Order will constitute a violation of this Order and may result in the imposition of civil penalties, as authorized under Section 30821.6, of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which such compliance failure persists, in addition to any other penalties authorized under Section 30820.

**IX. Extension of Deadlines**

The Executive Director may extend deadlines for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least ten days prior to expiration of the subject deadline.

**X. Appeal**

Pursuant to Public Resources Code Section 30803(b), any person or entity against whom this Order is issued may file a petition with the Superior Court for a stay of this Order.

**XI. Modifications and Amendments to this Order**

This Order may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of the Commission's administrative regulations.

**XII. Government Liability**

The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents in carrying out activities required and authorized under this Order, nor shall the State of California be held as a party to any contract entered into by Respondents or Respondents' agents in carrying out activities pursuant to this Order.

**XIII. Successors and Assigns**

This Order shall run with the land, binding all successors in interest, future owners of the property, heirs and assigns of Respondents. Notice shall be provided to all successors, heirs and assigns of any remaining obligations under this Order.

**XIV. No Limitation on Authority**

Except as expressly provided herein, nothing herein shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with this Order.

Executed in \_\_\_\_\_ on \_\_\_\_\_, on behalf of the California Coastal Commission.

By: \_\_\_\_\_ Peter Douglas, Executive Director

## **RESTORATION ORDER CCC-06-RO-02, BREDESEN**

Pursuant to its authority under Public Resource Code Section 30811, the California Coastal Commission hereby orders and authorizes Chris G. Bredesen and Virginia C. Bredesen, as Trustees of the C.G. & V.C. Bredesen Trust, (hereinafter referred to as “Respondents”) to:

### **I. Submittal of Removal and Restoration Plan**

- a. Within sixty days of issuance of this Order, Respondents shall submit, pursuant to Section V of this Order, for the review and approval of the Executive Director, two sets of a Removal and Restoration Plan, prepared by a licensed civil engineer or a qualified restoration ecologist or resource specialist, with credentials acceptable to the Executive Director. The plan shall provide for the removal of all unpermitted development from the property including the 1,059 linear-foot, four-foot wide, concrete and flagstone walkway with handrails, posts and edges; irrigation system; 910 square-foot; thirteen-foot high shade structure; 1218 square-foot, two-tier, concrete and flagstone patio; fire pit; storage locker; plastic sheeting covering the permitted chain link fence, and concrete planters on the face and at the toe of a coastal bluff.
- b. The Removal and Restoration Plan shall include the following provisions regarding the removal of unpermitted development:
  - a. A detailed description of proposed removal activities.
  - b. A timetable for removal.
  - c. Disposal site for removed development. The site must be a licensed disposal facility located outside of the Coastal Zone. Any hazardous materials must be transported to a licensed hazardous waste disposal facility.
  - d. If mechanized equipment is used, the following information shall be provided:
    - i. Type of mechanized equipment required for removal activities;
    - ii. Length of time equipment must be used;
    - iii. Routes utilized to bring equipment to and from the property;
    - iv. Storage location for equipment when not in use during removal process;
    - v. Hours of operation of mechanized equipment;

- vi. Contingency plan in case of a spill of fuel or other hazardous release from use of mechanized equipment that addresses clean-up and disposal of the hazardous materials and water quality concerns;
  - vii. Measures to be taken to protect water quality.
- c. The Removal and Restoration Plan shall also include a grading plan to restore the face and toe of the bluff where unpermitted grading or disturbance has occurred or where the slope of the bluff was impacted by removal of development pursuant to this Order. Disturbed or graded areas of the bluff shall be restored to match the existing topography of the immediately adjacent undisturbed bluff slope areas.
- d. The Removal and Restoration Plan shall also include a revegetation and erosion control plan to revegetate the bluff on the property where grading and/or vegetation removal has occurred or occurs as a result of removal of development pursuant to this Order. The revegetation and erosion control plan shall include the following criteria:
- i. An interim erosion control plan that provides for temporary erosion control measures such as geofabrics, silt fencing, sandbag barriers, or other measures to control erosion until revegetation of the restored slope is completed. These erosion control measures shall be required on the project site prior to and concurrent with any grading operations and shall be maintained throughout the process to minimize erosion and sediment to runoff waters during construction. All sediment shall be removed to an appropriate disposal site, approved by the Executive Director, either outside the coastal zone or to a site within the coastal zone permitted to receive fill.
  - ii. A revegetation program prepared by a qualified restoration ecologist or resource specialist, with credentials acceptable to the Executive Director, which 1) utilizes native species of coastal bluff scrub vegetation, including coast buckwheat (*Erigonum parvifolium*), 2) is consistent with the surrounding native plant community, and 3) includes indicators to be used in monitoring reports to establish the level of success of revegetation program, including but not limited to the following:
    - 1. 80% survival of container plants
    - 2. 75% ground coverage by annual non-native species
    - 3. No more than 25% bare ground
    - 4. No more than 15% cover by annual non-native species

5. 0% cover of perennial non-native species

- e. A monitoring and maintenance methodology that includes the following provisions:
  - i. Respondents agree to submit, on an annual basis for a period of five years (no later than December 31<sup>st</sup> of each year) a written report, for the review and approval of the Executive Director, prepared by a qualified resource specialist, evaluating compliance with the approved Removal and Restoration Plan. The annual reports shall include further recommendations and requirements for additional restoration activities in order for the project to meet the objectives of the Removal and Restoration Plan. These reports shall also include photographs taken annually from the same pre-designated locations (annotated to a copy of the site plans) indicating the progress of recovery in the restoration areas.
  - ii. At the end of the five-year period, Respondents agree to submit a final detailed report prepared by a qualified resource specialist for the review and approval of the Executive Director. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the approved Removal and Restoration Plan, Respondents agree to submit a revised or supplemental plan to compensate for those portions of the original program that were not successful. The Executive Director will determine if the revised or supplemental restoration plan must be processed as a CDP, a new Restoration Order, or a modification of this Order.
- f. If the Executive Director determines that any modifications or additions to the submitted Removal and Restoration Plan are necessary, he shall notify Respondents. Respondents shall complete requested modifications and resubmit the Removal and Restoration Plan for approval within 10 days of the notification.

II. Removal and Restoration

- a. Within thirty days after approval of the Removal and Restoration Plan by the Executive Director, Respondents shall:
  - i. Remove all unpermitted development, including the 1,059 linear-foot, four-foot wide, concrete and flagstone walkway with handrails, posts and edges; irrigation system; 910 square-foot; thirteen-foot high shade structure; 1218 square-foot, two-tier, concrete and flagstone patio; fire pit; storage locker; plastic sheeting, and concrete planters on the face and at the toe of a coastal bluff.

- ii. Complete all restorative grading consistent with the approved Removal and Restoration Plan.
  - iii. Revegetate all disturbed and graded areas of the bluff slope consistent with the approved Removal and Restoration Plan.
- b. Within sixty days after approval of the Removal and Restoration Plan by the Executive Director, Commission staff will conduct a site inspection to confirm compliance with the terms and conditions of the order.
  - c. Other than those areas subject to restoration activities, the areas of the property and surrounding areas currently undisturbed shall not be disturbed by activities required by this Order. Prior to initiation of any activities resulting in the physical alteration of the property, the disturbance boundary shall be physically delineated in the field using temporary measures such as stakes and colored tape.
  - d. Within thirty days of the implementation of the Removal and Restoration Plan, the Respondents shall submit to the Executive Director a report documenting the project's completion. The report shall include photographs that clearly show the entire bluff area and a statement from a qualified restoration ecologist or resource specialist, indicating that the Removal and Restoration Plan has been implemented according to this Order.

### III. Monitoring

Respondents will monitor restoration of the bluff on the property according to Section I.d of this Order. All monitoring documents shall be submitted according to Section V. of this Order.

#### **I. Persons Subject to the Order**

Persons subject to this Restoration Order are Respondents, Respondents' agents, contractors and employees, and any persons acting in concert with any of the foregoing.

#### **II. Identification of the Property**

The property that is subject to this Order is located at 437 Paseo de la Playa in Torrance, Los Angeles County and identified by the Los Angeles County Assessor's Office as APN 7512-003-022.

#### **III. Description of Unpermitted Development**

Unpermitted development includes unpermitted construction of a walkway, irrigation system, shade structure, patio, fire pit, storage locker, plastic sheeting, and concrete planters on the face and at the toe of a coastal bluff.

#### **IV. Commission Jurisdiction and Authority to Act**

The Commission has jurisdiction over this matter, as the property at issue is located within the Coastal Zone and in an area not covered by a certified Local Coastal Plan. The Commission is issuing this Order pursuant to its authority under Coastal Act Section 30811.

#### **V. Submittal of Documents**

All documents submitted pursuant to this Order must be sent to:

California Coastal Commission  
Attn: Christine Chestnut  
45 Fremont St., Suite 2000  
San Francisco, CA 94105-2219

With a copy of all documents to:

California Coastal Commission  
Attn: Pat Veersart  
89 S. California Street, Suite 200  
Ventura, CA 93001-2801

#### **VI. Effective Date and Terms of the Order**

The effective date of the Order is the date of approval by the Commission. The Order shall remain in effect permanently unless and until modified or rescinded by the Commission.

#### **VII. Findings**

The Order is issued on the basis of the findings adopted by the Commission at the March 2006 hearing, as set forth in the attached document entitled "Staff Report and Findings for Notice of Cease and Desist Order and Restoration Order".

#### **VIII. Compliance Obligation**

Strict compliance with the Order by all parties subject thereto is required. Failure to comply strictly with any term or condition of the Order including any deadline contained in the Order will constitute a violation of this Order and may result in the imposition of civil penalties, as authorized under Section 30821.6, of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which such compliance failure persists, in addition to any other penalties authorized under Section 30820.

#### **IX. Extension of Deadlines**

The Executive Director may extend deadlines for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least ten days prior to expiration of the subject deadline.

**X. Appeal**

Pursuant to Public Resources Code Section 30803(b), any person or entity against whom this Order is issued may file a petition with the Superior Court for a stay of this Order.

**XI. Modifications and Amendments to this Order**

This Order may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of the Commission's administrative regulations.

**XII. Government Liability**

The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents in carrying out activities required and authorized under this Order, nor shall the State of California be held as a party to any contract entered into by Respondents or their agents in carrying out activities pursuant to this Order.

**XIII. Successors and Assigns**

This Order shall run with the land, binding all successors in interest, future owners of the property, heirs and assigns of Respondents. Notice shall be provided to all successors, heirs and assigns of any remaining obligations under this Order.

**XIV. No Limitation on Authority**

Except as expressly provided herein, nothing herein shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with this Order.

Executed in \_\_\_\_\_ on \_\_\_\_\_, on behalf of the California Coastal Commission.

By: \_\_\_\_\_ Peter Douglas, Executive Director

**CCC-06-CD-02 and CCC-06-RO-02**

**Exhibit List**

**Exhibit**

**Number**

**Description**

1. Site map.
2. CDP No. P-76-7342, issued on June 21, 1976.
- 3a- d. Photographs of the unpermitted development on the property.
4. Notice of Violation letter from Commission staff to the Respondents, dated March 14, 2003.
5. Notice of Violation letter from Commission staff to the Respondents, dated July 29, 2004.
6. Staff Report and Commission findings regarding CDP Application No. 5-04-324, filed on May 17, 2005.
7. Notice of Intent to Record a Notice of Violation and to Commence Cease and Desist Order and Restoration Order Proceedings, from the Executive Director to the Respondents, dated January 18, 2006.
8. "Statement of Defense Notice of Intent to Commence Cease and Desist Order and Restoration Proceedings California Coastal Commission File No. V-5-01-037", with cover letter and attachments, dated February 6, 2006.

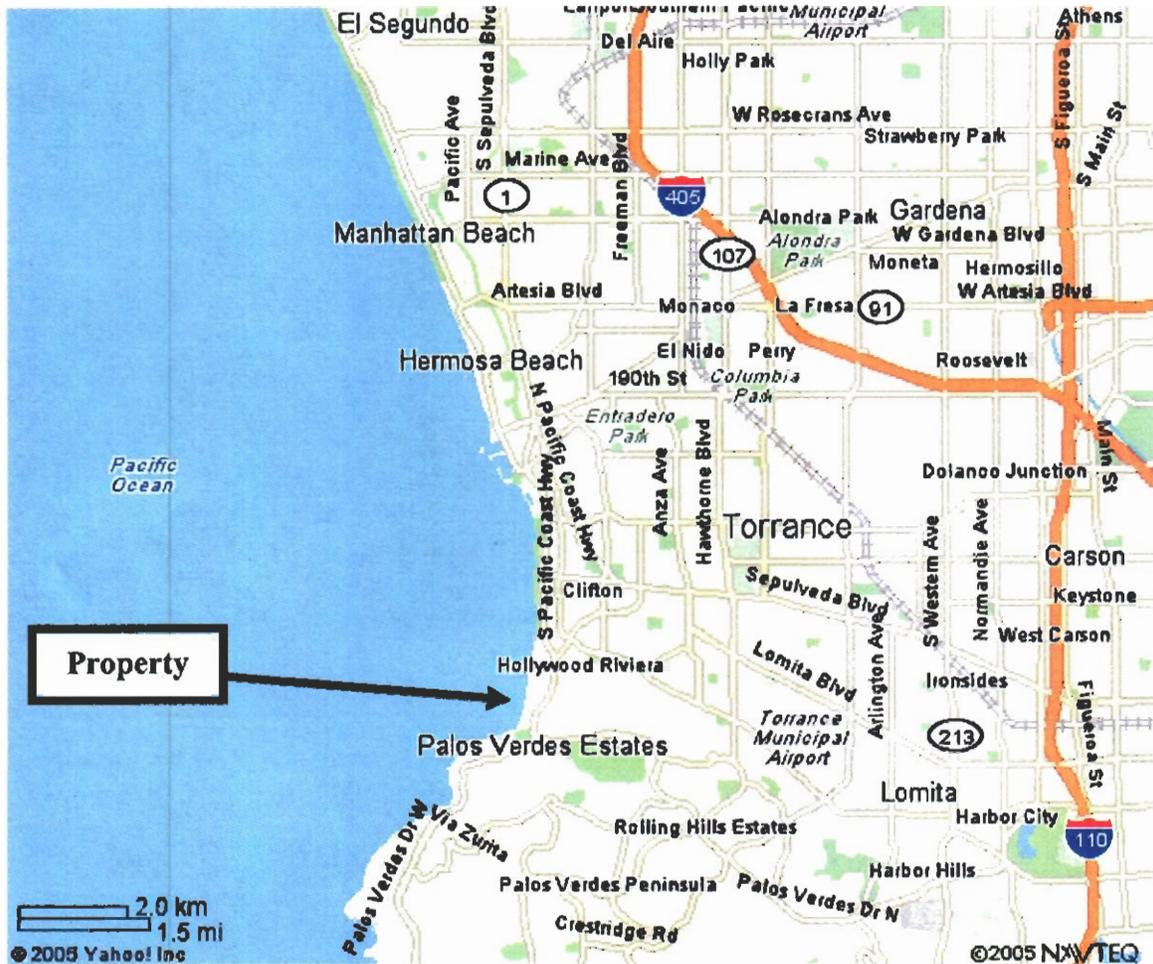


Exhibit 1: Location of Property

CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION  
SOUTH COAST REGIONAL COMMISSION

666 E. OCEAN BOULEVARD, SUITE 3107  
P. O. BOX 1450  
LONG BEACH, CALIFORNIA 90801  
(213) 436-4204 (714) 846-0648

5.04.324

EXHIBIT # 21

PAGE 1 OF 2

FILE COPY



590-5071

RESOLUTION OF APPROVAL AND PERMIT

Application Number: P-4-1-76-7342

Name of Applicant: Robert S. Hood

517 Paseo de la Playa, Redondo Beach, CA 90277

Permit Type:  Standard  
 Emergency

Development Location: 437 Paseo de la Playa, Torrance, CA

Development Description: Construct a two-story, single-family dwelling with detached four-car garage, arcade and swimming pool with attached jacuzzi, 26 feet above average finished grade.

Commission Resolution:

- I. The South Coast Conservation Commission finds that the proposed development:
  - A. Will not have a substantial adverse environmental or ecological effect.
  - B. Is consistent with the findings and declarations set forth in Public Resources Code Sections 27001 and 27302.
  - C. Is subject to the following other resultant statutory provisions and policies:
    - City of Torrance ordinances.
  - D. Is consistent with the aforesaid other statutory provisions and policies in that:
    - approval in concept has been issued.

COASTAL COMMISSION

~~50307E~~ E. The following language and/or drawings Exhibit 2  
 itate carrying out the intent of the So CCC-06-NOV-01 and CCC-06-CD-02  
 Zone Conservation Commission: and CCC-06-RO-02  
 (Bredesen)  
 GE 7 OF 2 application, site map, plot plan and Page 1 of 2

II. Whereas, at a public hearing held on June 7, 1976 (date) at Torrance (location) by a unanimous vote of 2 2 ~~hereby approves~~

the application for Permit Number P-4-1-76-7342 pursuant to the California Coastal Zone Conservation Act of 1972, subject to the following conditions imposed pursuant to the Public Resources Codes Section 27403: Prior to issuance of permit, applicant shall submit:

- 1. a signed and notarized statement agreeing: a. to either use a solar heating system only, for the swimming pool or to have an unheated swimming pool; and b. to use solar heating system only, for the jacuzzi
- 2. No portion of the structure, including decks and balconies, shall encroach upon the 25 ft. bluff setback.

Condition/s Met On June 21, 1976 By jlrlr

III. Said terms and conditions shall be perpetual and bind all future owners and possessors of the property or any part thereof unless otherwise specified herein.

IV. The grant of this permit is further made subject to the following:

- A. That this permit shall not become effective until the attestation of verification of permit has been returned to the South Coast Regional Conservation Commission upon which copy all permittees have acknowledged that they have received a copy of the permit and understood its contents. Said acknowledgement should be returned within ten working days following issuance of the permit.
- B. Work authorized by this permit must commence within 360 days of the date accompanying the Executive Director's signature on the permit, or within 480 days of the date of the Regional Commission vote approving the project, whichever occurs first. If work authorized by this permit does not commence within said time, this permit will automatically expire. Permits about to expire may be extended at the discretion of the Regional Commission.

V. Therefore, said Permit (Standard, ~~XXXXXXXX~~) No. P-4-1-76-7342 is hereby granted for the above described development only, subject to the above conditions and subject to all terms and provisions of the Resolution of Approval by the South Coast Regional Conservation Commission.

VI. Issued at Long Beach, California on behalf of the South Coast Regional Conservation Commission on June 21, 1976.

COASTAL COMMISSION

~~5-03-242~~

EXHIBIT # 4

42876 PAGE 2 OF 2

M. J. Carpenter

M. J. Carpenter  
Executive Director

Exhibit 2  
CCC-06-NOV-01 and CCC-06-CD-02  
and CCC-06-RO-02  
(Bredesen)  
Page 2 of 2

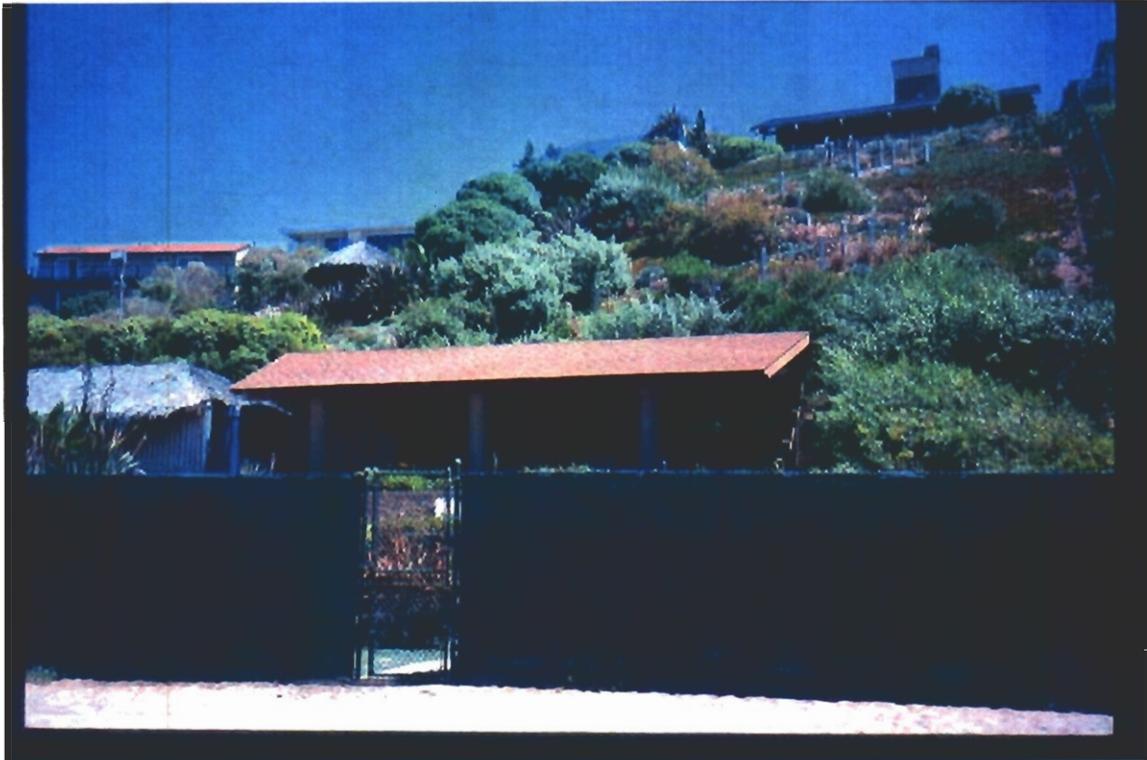


Property

**Exhibit 3a: Bredesen property, surrounding costal bluff area, and Torrance Beach.**



**Exhibit 3b: Bredesen property and unpermitted development on the bluff face and at the toe of the bluff.**



**Exhibit 3c: Photo taken by Commission staff of the shade structure and walkway, before additional development was undertaken at toe of the bluff.**



**Exhibit 3d: Photo taken by Commission staff of the shade structure and walkway.**

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
89 SOUTH CALIFORNIA ST., SUITE 200  
VENTURA, CA 93001  
(805) 641-0142



**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT  
REGULAR AND CERTIFIED MAIL**

March 14, 2003

Chris G. Bredesen, Trustee  
C G & V C Bredesen Trust  
437 Paseo De La Playa  
Torrance, CA 90277

Violation File Number: V-5-01-037

Property location: 437 Paseo De La Playa, Torrance; Los Angeles County

Unpermitted Development: Construction of a shade structure at toe of bluff, staircase down bluff face, and fence on sandy beach and bluff slope.

Dear Mr. Bredesen:

Our staff has confirmed that development consisting of several unpermitted structures has occurred on your property at 437 Paseo De La Playa, which is located within the Coastal Zone.<sup>1</sup> These structures include a chain-link fence on the sandy beach and bluff slope, a shade structure at the toe of the bluff, and a staircase located on the bluff face. Commission staff has researched our permit files and concluded that no Coastal Development Permits have been issued for any of the above development. Pursuant to Section 30600 (a) of the Coastal Act, any person wishing to perform or undertake development in the Coastal Zone must obtain a Coastal Development Permit, in addition to any other permit required by law. "Development" is defined by Section 30106 of the Coastal Act as:

*"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....*

<sup>1</sup>. Public property records indicate that you own this property as Trustee. Please let us know if this is not correct or if we have not correctly identified the name of the Trust.

The above referenced chain-link fence, shade structure, and staircase constitute development under the Coastal Act and, therefore, require a Coastal Development Permit. Any development activity conducted in the Coastal Zone without a valid Coastal Development Permit constitutes a violation of the Coastal Act.

Additionally, it appears that the residence on your property may have been constructed without the required coastal development permit. The Los Angeles County Assessor records show that the residence on your property was constructed after 1976, after the effective date of the Coastal Zone Conservation Act of 1972, and therefore, is subject to all coastal development permit requirements. However, our records do not indicate that any coastal development permit was ever issued for any development on your property, including construction of a residence. If you believe the residence was constructed pursuant to a valid coastal development permit, please submit evidence to that effect. In the event that the residence was constructed without the required coastal permit, please contact me immediately to discuss potential resolution of the matter.

We do not believe that Commission staff could recommend approval of coastal development permit to authorize the shade structure at toe of bluff, staircase down bluff face, and fence on sandy beach and bluff because they are not consistent with the policies of the Coastal Act, Public Resources Code section 30200, et seq. Therefore, to resolve this matter in a timely manner and avoid the possibility of a monetary penalty or fine, we are requesting that you submit an application by April 11, 2003 for a Coastal Development Permit that authorizes removal of the unpermitted shade structure at toe of bluff, staircase down bluff face, and fence on sandy beach and bluff and restoration of the bluff slope and sandy beach portion of the site. For your convenience, a Coastal Development Permit Application is enclosed. Please contact me by no later than **March 26, 2003**, regarding how you intend to resolve this violation.

We hope that you will choose to cooperate in resolving this violation by submitting a permit application by April 11, 2003. If you do not, we will consider pursuing additional enforcement action against you. The Coastal Act contains many enforcement remedies for Coastal Act violations. Section 30803 of the Act authorizes the Commission to maintain a legal action for declaratory and equitable relief to restrain any violation of the Act. Coastal Act section 30809 states that if the Executive Director determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Coastal Act section 30810 states that the Coastal Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to ensure compliance with the Coastal Act. Moreover, section 30811 authorizes the Commission to order restoration of a site where development occurred without a permit from the Commission, is inconsistent with the Coastal Act, and is causing continuing resource damage. Finally, the Executive Director is authorized, after providing notice and the opportunity for a hearing as provided for in section 30812 of the Coastal Act, to record a Notice of Violation against your property.

In addition, section 30820(a) provides for civil liability to be imposed on any person who performs or undertakes development without a coastal development permit or in a manner that is inconsistent with any coastal development permit previously issued by the Commission in an amount that shall not exceed \$30,000 and shall not be less than \$500. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a coastal development permit or that is inconsistent with any coastal development permit previously issued by the Commission when the person intentionally and knowingly performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists. Section 30821.6 provides that a violation of either type of cease and desist order or of a restoration order can result in the imposition of civil fines of up to \$6,000 for each day in which the violation persists. Finally, Section 30822 allows the Commission to maintain a legal action for exemplary damages, the size of which is left to the discretion of the court. In exercising its discretion, the court shall consider the amount of liability necessary to deter further violations.

Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me.

Sincerely,



Andrew Willis  
Assistant Enforcement Officer

cc: Steve Hudson, Enforcement Supervisor  
Teresa Henry, District Manager  
Pam Emerson, Planning Supervisor

Enclosures: Coastal Development Permit Application

**CALIFORNIA COASTAL COMMISSION**

SOUTH COAST AREA  
200 OceanGate, 10<sup>th</sup> Floor  
Long Beach, CA 90802  
(562) 590-5071

**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT  
REGULAR AND CERTIFIED MAIL**

July 29, 2004

Chris G. Bredesen, Trustee  
C G & V C Bredesen Trust  
437 Paseo Del La Playa  
Torrance, CA 90277

Violation File Number: V-5-01-037

Property location: 437 Paseo De La Playa, Torrance; Los Angeles County

Unpermitted Development: Construction of a shade structure at toe of bluff, staircase down bluff face, removal of major vegetation, grading, and a fence on the sandy beach and bluff slope.

Dear Mr. Bredesen:

We have verified that you are in receipt of our letter to you dated March 14, 2003, which informed you that: (1) unpermitted development has occurred on your property and (2) in order to resolve this matter administratively and avoid the possibility of court-imposed fines and penalties, the deadline for you to submit a complete coastal development permit application to remove the unpermitted development and restore the site was April 14, 2003. Our records indicate that on June 28, 2002 you submitted an application requesting after-the-fact approval for some, but not all, of the above referenced unpermitted development. Our records also indicate that on December 5, 2003 you withdrew Coastal Development Permit Application 5-03-212. It is our understanding that your intention was to immediately resubmit a new application that would address all of the unpermitted development on site. However, as of this date, our office has still not received an application for the above unpermitted development.

As stated in our previous March 14, 2003 letter, and as you were informed by our staff during the processing of your previous application, we do not believe that Commission staff could recommend approval of a coastal development permit to authorize the unpermitted development on the sandy beach and the bluff slope on your property because such development is not consistent with the policies of the Coastal Act.

Therefore, in an effort to resolve this matter in a timely manner and avoid the possibility of a monetary penalty or fine, we are requesting that you submit your completed application for a Coastal Development Permit by **August 27, 2004** to remove the unpermitted development and restore the site to its previous condition. Regardless of whether your application is for removal of the unpermitted development and restoration of the site or a request for after-the-fact approval of the development, we would like to remind you that in order to resolve the outstanding violations on your property your application should address all unpermitted development that has occurred. Therefore, please be sure that your application addresses all the unpermitted development on the property including, but not limited to, the chain-link fence on the sandy beach and bluff slope, grading, vegetation removal, the shade structure at the toe of the bluff, the staircase located on the bluff face, and the "open space" stone area (located seaward of the proposed 400 square foot structure). In addition, you may submit any information which you feel will help Commission staff gain a clear understanding of the scope of your project. Please contact me no later than **August 13, 2004**, regarding how you intend to resolve this violation.

Coastal Act Section 30809 states that if the Executive Director of the Commission determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Coastal Act section 30810 states that the Coastal Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. A violation of a cease and desist order can result in civil fines of up to \$6,000 for each day in which the violation persists.

In addition, we remind you that Sections 30803 and 30805 of the Coastal Act authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a)(1) of the Coastal Act provides that any person who violates any provision of the Coastal Act may be subject to a penalty amount that shall not exceed \$30,000 and shall not be less than \$500. Coastal Act section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs or undertakes any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 for each day in which the violation persists. Finally, the Executive Director is authorized, after providing notice and the opportunity for a hearing as provided for in Section 30812 of the Coastal Act, to record a Notice of Violation against your property.

Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (562) 510-5235.

Sincerely,



Kimberly Carter  
Assistant Enforcement Officer

cc: Steve Hudson, Enforcement Supervisor  
Teresa Henry, District Manager  
Pam Emerson, Planning Supervisor  
Norbert and Stephanie Dall, Dall & Associates

Enclosures: Coastal Development Permit Application

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

7001 1940 0002 0543 7544

Postage	\$ 1.06	7-29-04  Postmark Here
Certified Fee	2.30	
Return Receipt Fee (Endorsement Required)	1.75	
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$ 5.11	

OFFICIAL USE

Sent To  
Chris G. Bredesen, Trustee  
Street, Apt. No.,  
or PO Box No. 437 Paseo De La Playa  
City, State, ZIP+4  
Torrance, CA 90277

PS Form 3800, January 2001 See Reverse for Instructions

Exhibit 5  
CCC-06-NOV-01 and CCC-06-CD-02  
and CCC-06-RO-02  
(Bredesen)  
Page 3 of 3

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071

Filed: 11/3/2004  
49th Day: 12/22/2004  
180th Day: waived  
Staff: PE-LB  
Staff Report: 5/19/2005  
Hearing Date: 6/07/2005  
Commission Action:



# Tu 9d

**STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NUMBER:** 5-04-324

**APPLICANT:** C. G. and V. C. Bredesen Trust, Chris and Ginger Bredesen, Trustees

**AGENT:** Dall and Associates (Norbert Dall, Stephanie Dall)

**PROJECT LOCATION:** 437 Paseo de la Playa, City of Torrance (Los Angeles County)

**PROJECT DESCRIPTION:** Request for after-the-fact approval of an existing four foot wide meandering 1,059 linear foot wood/concrete and flagstone walkway on a bluff face, an existing 1,218 sq. ft. two-level patio, demolish an existing 13-foot high 910 sq. ft. shade structure, replace with 540 sq ft trellis, supported by three concrete columns, leave in place an existing storage locker, convert existing fire pit to planter (all also on the bluff face just above the toe of the bluff), on a 27,808 sq. ft. beach-fronting lot. In addition, the proposed project includes the new construction of a five-foot high retaining wall, cut into the bluff face, requiring 38 cubic yards grading, new concrete stone faced planters and equipment lockers adjacent to the patios. Applicant proposes to mitigate the development on the bluff face by eradicating non-native vegetation on 9,960 sq. ft. of the slope, removal of the existing irrigation system and planting approximately 6,870 sq. ft. with coastal bluff scrub, 2,180 sq. ft. with plants of the Palos Verdes and Santa Monica Mountains plant communities and 910 sq. ft. with regionally local climbing plants. As part of the revegetation, the applicant also proposes to remove the existing unpermitted irrigation system, to install new drip irrigation and water quality improvements and to monitor the native vegetation on the bluff slope.

**LOCAL APPROVALS RECEIVED:**

City of Torrance, Approval in Concept, 5/12/04

**SUBSTANTIVE FILE DOCUMENTS:**

See Appendix A.

**SUMMARY OF STAFF RECOMMENDATION:**

The applicant is requesting after-the-fact approval for construction of an existing meandering 4-foot wide concrete path from a bluff top back yard down the bluff face to the beach, an existing fire ring (which he now proposes to convert to a planter), planters and an existing storage locker for beach equipment all also on the bluff face at the toe of a coastal bluff. In addition, the proposed project includes the after the fact approval of an unpermitted, existing 1,218 sq. ft. two level patio on the bluff face, removal of an existing unpermitted 910 sq ft. shade structure and replacing it with a 540 sq ft. trellis; after the fact approval of a five-foot high retaining wall with 38 cubic yards grading to support the existing shade structure and the construction of new concrete planters adjacent to the patios. The applicant proposes to mitigate the project by installing coastal bluff scrub, primarily coast buckwheat, *Eriogonum parvifolium*, on about 7,042 sq. ft. of bluff face and to plant the flatter area around the shade structure (about 2,000 sq. ft.) with "native vines" California native riparian plants to soften the outline of the shade structure<sup>1</sup>. The riparian plants would have to be irrigated. Finally, the applicant proposes to remove invasive plants and the unpermitted sprinklers from the revegetation area and install a new drip irrigation system. The proposed project is located on the seaward face of a coastal bluff immediately inland of Torrance Beach, a public beach. The project site is consequently highly visible from the public beach. The applicant indicates that the revegetation is contingent upon approval of the walkway, patios, retaining wall, storage locker, planter, and trellis.

Staff recommends that the Commission **deny** the project because, as a whole, it is inconsistent with Sections 30210, 30221, 30251, and 30253 of the Coastal Act. (**The motion is on page 4 of this report.**) With regard to public access and recreation, coastal bluffs are a source of sand supply, and there is evidence that the continued hardening of coastal bluffs reduces the amount of sand available to beaches, reducing the size of a coastal recreational resource, which is inconsistent with the public access and recreation policies of the Coastal Act. Section 30251 protects the scenic and visual qualities of coastal areas and requires the Commission to minimize the alteration of natural landforms. The proposed retaining walls and this project as a whole, substantially alter the appearance of the natural bluff. Section 30253 (2) requires approved development to neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The project requires the installation of retaining walls, and drains on the bluff face to protect the patios, walkway and shade structure from damage from subaerial erosion of the bluff.

Section 30253(5) protects special communities and neighborhoods, which, because of their unique characteristics, are popular visitor destination points for recreational uses. The project alters the special area at the toe of the Torrance bluff. The toe of the bluff,

<sup>1</sup> The acreage in this description is derived from the plan notes applicant's revegetation plan, Kelley, received January 6, 2005, and the applicant's revised project description provided May 11, 2005, which was resolved in favor of the May 11 document, Exhibit 7.

where the retaining walls, existing shade structure, storage lockers and fire pit are located, and where the retaining walls are proposed, is immediately inland of Torrance Beach, which is a public beach. The irregular backdrop of a vegetated bluff is essential to the character of this public beach that is heavily used by visitors from Redondo Beach, Torrance, and other south Los Angeles County communities and is used – albeit more sparsely – by an even wider range of people from all over. Changing the irregular vegetated bluff to a row of structures and hardened walkways changes the quality of the area from an undeveloped, recreational open space with the backdrop of an undeveloped bluff, to a developed urban neighborhood.

While there are exceptions, the overall appearance of the bluff along Paseo de la Playa is natural and undeveloped. With the exception of two pre-coastal decks, one at each end of this row of 28 lots, all permitted houses, and roofed structures are sited at the top of the coastal bluff. While before the adoption of the Coastal Act the bluff was crisscrossed with a network of shared pioneered trails, there are few permitted paved private accessways. Six of the 28 lots have permitted or pre-coastal stairways or hardened footpaths traversing the bluff face. Three of these hardened accessways are located on the five lots to the north of this lot, the other three are scattered on lots that are located farther south. Two of the lots with permitted stairways have permitted patios near beach level. Except for the lots described above, bluff face development either does not exist or is unpermitted development. There are four stairways or paved walkways that have been improved with no record of a permit, and one bluff face stairway near the southern end of the bluff that was relocated without a permit. The shade structures, including the one subject to this application, that exist on four of the 28 residential lots, are all unpermitted. The four unpermitted shade structures are located on the northernmost five lots. The Commission's Enforcement Division will evaluate further actions to address these matters.

The applicant's representative has questioned the Commission's ability to limit landform alteration on this site. The applicant's representative has insisted that the slope on the lot that extends from a building pad elevated 85 feet above the beach (elevation 98) to the beach (elevation 13) at a 2:1 slope is not a "coastal bluff" and not a "bluff" at all. This is discussed in detail in Section B of this staff report and in Exhibits 12, 13 and 14.

Staff believes that the status of the area as a coastal bluff is irrelevant to the Commission's ability to limit landform alteration on the site. However, Staff recommends that the Commission, nevertheless, address this contention and find that this bluff is a Coastal bluff as defined by Section 13577 of Title 14 of the Code of Regulations. Section 13577 indicates that a bluff is a bluff if it *has been* subject to marine erosion or if its toe lies within the appeal area (which extends 300 feet from the beach.) The toe is adjacent to a public beach. Staff Geologist Mark Johnsson's response to this assertion is found in Section B of the staff report and in Exhibit 12.

**I. STAFF RECOMMENDATION:**

**MOTION:** *I move that the Commission approve Coastal Development Permit No. 5-04-324 for the development proposed by the applicant.*

**STAFF RECOMMENDATION OF DENIAL:**

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO DENY THE PERMIT:**

The Commission hereby **denies** a coastal development permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act and will prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

**II. Findings and Declarations:**

The Commission hereby finds and declares as follows:

**A. Project Description and Location**

**Project Location**

The project site is located within an existing residential area at 437 Paseo de la Playa, City of Torrance, Los Angeles County (Exhibits 1, 2 & 3). The site is the sixth lot to the south of the Torrance Beach Park parking lot, in a group of lots on the northern end of the 28 residential lots on the bluff top between the first public road, Paseo de la Playa, and the sea. The bluff in question varies in height from approximately 60 feet at the Los Angeles County Torrance Beach Park to the north of the residential lots to 120 feet near the boundary of Palos Verdes Estates. The bluff tops of all 28 residential lots have been developed with single-family residences. Torrance Beach, the beach seaward of the toe of the bluff, is public. Vertical public access to this beach is available to pedestrians via public parking lots and footpaths located at the Torrance Beach Park, which is approximately 500 feet to the north of the project site (Exhibits 2, 18 p. 4). There are also a vertical beach public access way and public parking in Palos Verdes Estates located approximately  $\frac{3}{4}$  of a mile to the south of project site.

## Project Description

The applicant requests after-the-fact approval of an existing four foot-wide 1,059 linear foot meandering concrete walk way from the back yard of the bluff top residence (elevation 98) down a 2.1:1 seaward-facing slope to its toe (elevation 13). The applicant asserts that because a pioneered trail at one time crossed this property, part of his project is paving an existing trail. At the toe, the applicant requests after the fact approval of an existing 1,218 sq. ft. two-level concrete patio, existing concrete planters, of an existing fire pit, which he proposes to convert to a planter, and an existing equipment storage locker. In addition, the applicant seeks to remove an existing 910 sq. ft. shade structure (over the upper portion of the patio), after the fact approval for a concrete retaining wall to be constructed at the rear wall of the shade structure and to replace the shade structure with a 540 sq. ft. foot trellis. The construction, mostly for the retaining structure, will require approximately 38 cubic yards of new grading; according to the applicant's engineering consultant, a similar amount of grading took place during construction of the patios, bring the total grading to about 76 cubic yards. The applicant proposes to mitigate this work by eradicating invasive non-native vegetation on 9,222 sq. ft. of bluff face, planting coastal bluff scrub vegetation on an extensive portion of the bluff face (about 7,042 sq ft of mid-bluff. area), and by planting a 2,180 sq. ft. area near the patios and shade structure with "horticultural vegetation", mostly California riparian plants, to screen them from view from the beach. In addition, the applicant proposes to remove unpermitted sprinklers from the bluff face, and replace them with a new drip irrigation system and water quality improvements and to monitor the native vegetation<sup>2</sup>. While the shade structure, walkway, and patios are in place, the applicant proposes to carry out some changes to respond to City of Torrance. The applicants, as required by the City are also proposing to install a new five-foot retaining wall (at the rear of the proposed trellis), and planters. In the mid 1970's, the Commission approved a chain link fence at the toe of the bluff on this and the adjacent four lots, separating the bluff face from the public beach. The applicant has covered this fence with black plastic, which the applicant asserts, hides the shade structure from public view, and reduces the visual impact of the development. The single-family house was approved with a separate permit in 1976, P 76-7342. The house is located at approximately 99 feet above sea level. (See Exhibits 5, 6 and also Exhibit 7 for revised Comprehensive Project Description).

## Prior Development at Subject Site and Surrounding Area

On June 7, 1976, the South Coast Regional Conservation Commission approved a house on the bluff top portion of this lot "construction of a 26-foot high, two-story, single-family residence with a detached four-car garage, arcade, and swimming pool with an attached jacuzzi, P 76-7342 (Exhibit 21), with conditions. Consistent with the project plans, the garage, arcade, swimming pool, and jacuzzi are located landward of the home. That permit was approved by the Commission with a condition requiring the applicant to submit

<sup>2</sup> Comments on the plan by USFWS staffer Mike Bianchi and Staff ecologist John Dixon's are found in Exhibits 10 and 11.

revised plans showing no portion of the structure, including decks and balconies encroaching onto the 25-foot bluff setback (Exhibit 21). The house was constructed and complies with the plans. The applicant does not propose any changes to the existing development on the top of the bluff, but with this application, requests after-the-fact approval to construct walkways, decks, and retaining walls and trellis seaward of the 25 foot set back line. Based on the review of historical aerial photographs from 1972, 1993 and 2000, staff has confirmed that no development was present on the bluff face of the subject property prior to September 6, 2000. The applicant's agent has stated that the unpermitted structure at the toe of the bluff was built in 2002. In 1978, the previous owner, Robert Hood, applied for and received a permit for a lot line adjustment between the present lot and the adjacent lot, which he also owned (P 78-8892 Hood).

In response to direction by Commission Enforcement Staff to submit an application for removal of the unpermitted development and restoration of the site, the applicant submitted an application for after-the-fact approval for construction of a 400 sq. ft. "storage shed/beach shade" structure on July 24, 2002. However, the 2002 application was rejected at the initial screening level because the submittal did not contain even the minimal application materials for staff to accept the application. The applicant subsequently resubmitted that permit application, still only seeking authorization for the shade structure, on April 28, 2003 (5-03-242). On December 10, 2003 the applicant withdrew application 5-03-242. On August 12, 2004, the applicant submitted an application (5-04-324) with an augmented project description that contained all unpermitted development on the site, and a restoration plan (including the 910 sq. ft shade structure, fire ring etc.) The application remained incomplete for a number of months while staff and the applicant worked together to complete the application and to assure that the restoration portion of the package was based on science acceptable to the resources agencies. The application was deemed complete on November 3, 2004.

### **Permit History for Bluff Face Development in Project Vicinity**

Figure 1 and 2 on the following two pages and Exhibit No. 23 summarize the permit history of bluff face development for the 28 residential lots located along Paseo de la Playa in Torrance.

<b>FIGURE 1 TORRANCE BLUFFS INVENTORY OF BLUFF FACE DEVELOPMENT PERMITTED AND PRE-COASTAL DEVELOPMENT</b>			
<b>Pre-coastal</b>	<b>Development</b>	<b>Location</b>	<b>Permit number</b>
3	<b>Stairways/ paths</b>		
		413/417	NA
		601	NA
		627	NA
2	<b>Patios/decks<sup>3</sup></b>		
		413/417	NA
		627	NA
0	<b>Shade structures</b>		
			NA
0	<b>Retaining walls</b>		
			NA
<b>Approved</b>			
3	<b>Stairways/ paths</b>		
		429	5-85-755
		433	5-90-1041A3
		515	5-90-1079
0	<b>Shade structures</b>		
3	<b>Retaining walls</b>		
		429	5-85-755
		433	5-90-1041A3
		449 <sup>4</sup>	5-90-355

<sup>3</sup> Patios/decks listed above are located below concrete drainage swale marking the "historic top of bluff".

<sup>4</sup> Low wall constructed as part of upper bluff repair, not highly visible.

<b>FIGURE 2 TORRANCE BLUFFS INVENTORY OF BLUFF FACE DEVELOPMENT UNPERMITTED DEVELOPMENT</b>			
<b>Unpermitted.</b>			
<b>4</b>	<b>Stairways/ paths<sup>5</sup></b>	<b>ADDRESS</b>	
		425*	
		437*	
		445	
		[601 <sup>6</sup> ]	
		605	
<b>3</b>	<b>Patios/decks</b>		
		429	
		433	
		437	
<b>4</b>	<b>Shade structures</b>		
		413	
		429	
		433	
		437	

When the Commission assumed jurisdiction in 1973, there were three improved bluff face accessways on this bluff. There were two platforms perched on the bluff face -- one at each end of the row of lots. Since 1973, the Commission has approved three ramps or stairways down the bluff face to the toe of the bluff on the 28 lots along Paseo de la Playa. In one (5-85-755), the applicant asserted the need for safe access for permission to build a concrete walkway, a wall at the toe of the bluff and a patio above the beach. In the second, directly north of the applicant's lot, (5-90-1041A3), the Commission approved a narrow property line stairway, sited along an existing wall to reduce visual impacts, as part of a bluff reconstruction and restoration that the owners requested to repair a massive blow-out. The absence of the promised landscaping at these sites has been referred to the Commission's Enforcement staff. A lot located eight lots to the south of the subject lot received a permit in 1991 to stabilize an "existing path " with redwood beams (5-90-1079 (Wright)). During consideration of the third stairway (5-90-1079), the applicant provided persuasive evidence that placement of redwood ties was merely a repair and stabilization

<sup>5</sup> A web of unpermitted paths existed across several lots in 1972. An asterisk indicates that these were further modified without a CDP after 1973.

<sup>6</sup> This stairway has been rebuilt in a new location. Since there was a stairway on this lot in 1972, even though a permit was needed for its relocation, the relocated stairway is not included in staff report total as "unpermitted".

of a pre-existing soft-footed path. The Commission approved two patios in conjunction with stairways, but it has approved no shade structures at the toe of the bluff.

The Commission has approved other development on the bluff face or at the toe of the bluff. The house directly south of the property received a permit to construct a walkway to an upper bluff terrace, conditioned not to extend seaward of a swale marking the historic top of the bluff. Two lots to the south of the subject lot, the Commission approved remedial sand colored concrete terrace drains and bluff restoration (5-90-868) but no stairway and no development below mid-bluff. An owner of another lot received approval for a property line fence, extending down the bluff. The Commission denied an application for construction of stairs down the bluff face; a covered observation deck located towards the base of the bluff and bluff restoration for the endangered El Segundo Blue butterfly on a down coast site at 613 Paseo de la Playa (5-03-328 Carey)<sup>7</sup>. The Commission acknowledges that several lots have inconspicuously pioneered paths down the bluff; shared with adjacent lots or the public, these are not improved and appear in 1973 photographs.

The Commission has approved five new houses on the bluff top lots and a number of additions to existing single-family houses and appurtenant structures, such as pools, jacuzzis, and patios on the top of the bluff. Most of the approved additions were at the top of the bluff, or inland of a three foot wide concrete lined drainage structure parallel to the bluff top, that represents the historic top of bluff north of 449 Paseo de la Playa. In approving this development the Commission routinely imposed conditions limited development to a 25-foot bluff top set back. In making these approvals, the Commission agreed with the applicants that a concrete swale allocated about ten feet below the house pads and parallel to the bluff top represented the historic top of the bluff (5-01-405A (Conger), P-5-77-716 (Warren)).

Of the twenty-eight residential lots on Paseo de la Playa, six (6) have approved stairs or hardened footpaths that extend down the bluff, three of which are pre-coastal, and three of which, including two lots directly north of the subject property received coastal development permits allowing the construction of stairs/walkway to the beach. Four additional lots, including the subject lot, have unpermitted ramps or stairways under investigation; one property that had a pre-coastal stairway, appears to have relocated the stairway without seeking a coastal development permit. However, eighteen (18) lots do not appear to have any stairs or walkways extending down the bluff face.

As shown in the table above, the Commission has approved no structures other than paths and walls -- in other words, the Commission has not approved any "shade structures" or trellises at the toe of the bluff. The Commission has approved only minor development near the toe of the bluff. When the beach transferred to the City, the Commission approved a fence at the toe of the bluffs along five lots, including this one, separating the private property from the beach. The northernmost lot has development on

<sup>7</sup> The Commission's Enforcement Division is currently investigating unpermitted development along the bluffs at Paseo de la Playa in Torrance, including stairways and toe of slope imp

the bluff face that includes stairs and a small deck about 30 feet above the toe of the bluff and a volleyball court at sand level. While not coastal permit was approved for this work, the ramp, volley ball court and deck appear in the Commission aerial photo dated 1972 and existed prior to the effective date of the Coastal Act and the Coastal Zone Conservation Act of 1972, and needed no permit. However, a shade structure visible in more recent photographs appears to have been constructed after the Coastal Act without a coastal development permit.

## **B. Issues of Jurisdiction.**

Two relevant Coastal Act sections regulate development along coastal bluffs. One requires the Commission to protect the scenic and visual quality of coastal areas and to minimize the alteration of natural landforms; a second requires the Commission to assure safety of development and to prohibit development that requires protective devices that would substantially alter of natural landforms along bluffs and cliffs.

### ***Section 30251 Scenic and visual qualities***

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

### **Section 30253 Minimization of adverse impacts**

*New development shall:*

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*
- (3) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.*
- (4) Minimize energy consumption and vehicle miles traveled.*
- (5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics are popular visitor destination points for recreational uses.*

The applicant initially argued that the lot in question is not a coastal bluff, and therefore Section 30253(2) does not apply. In support of this contention, the applicant asserted that:

- 1) The lot in question is not a bluff because beach replenishment in the 1930's removed the toe of the slope away from the impact of the waves. The toe of the bluff is by and large free of wave attack. Therefore, the slope is no longer a coastal bluff.
- 2) Topographic maps prepared at or about 1900 show the sand line in a location much closer to the toe of the slope than it is presently.
- 3) Mid -Nineteenth Century mariners' logs identify this area as "low rolling hills."
- 4) Only a rocky bluff should be considered a bluff; bluffs consisting of sand or unconsolidated clays should not be considered coastal bluffs. Since the upper layers of soils on the property is sand above windblown dunes; actual rock is below the surface deposits; and this slope should not be considered a bluff.
- 5) The applicant's geological consultant and coastal engineer share the applicant's opinion that the site is not a coastal bluff (Exhibit 15, 16).

In support of the contention, the applicant has provided a wave run-up study indicating that the storm waves rarely if ever attack the toe of the bluff, because the beach normally protects it, and a statement from the coastal engineer that the beach was augmented in the 1930's, which since that time protected the bluff from wave action.

With regard to beach replenishment the beach at the toe of the bluff was nourished in the late 1960's as well as at earlier dates. This difference between the present width of the sand area and the historic width of the sandy beach (from the toe of the bluffs to the waterline) was considered in a lawsuit between the previously owners Hood and Muller, the City of Torrance and the State of California In the early 1970s. In that suit, which also included a prescriptive rights component, the State and City argued successfully that the sand areas at the toe of the bluff should be considered public. In the settlement between the landowners and the public agencies, the mean high tide line was agreed to be located ten feet seaward of the "toe of the bluff", and the owners then transferred the ten feet between the toe of the bluff and the mean high tide line to the City of Torrance (Exhibits 17, 18, 19, & 20). In all these discussions the bluff is referred to as "the bluff."

Furthermore, the Commission does not concur that the placement of sand at the toe of a coastal bluff changes the status of the bluff from a coastal bluff to a "slope", and more importantly removes the development on the bluff in question from the need for consistency with Coastal Act sections 30251 and 30253. With respect to this issue, Mark Johnsson, staff geologist states:

Finally, I have had numerous discussions with the applicant's agent, Norbert Dall, concerning whether or not the slope should be considered a coastal bluff. In some regards, the question is moot. The geologic stability of the proposed (existing) development has been analyzed, and I concur with the applicant's consultants that the development can "assure [geologic] stability" as required by Coastal Act Section 30253, as

long as the recommendations in the above referenced reports are adhered to. Nevertheless, out of concern for the protection of visual resources, the Commission generally has not allowed private development on the face of coastal bluffs. Again, the definition of the landform is therefore less important in this case than the impact of the proposed development on visual resources.

That said, it is my opinion that the slope at the site certainly meets any geologic, legal, and practical definition of a coastal bluff. This is not a particularly steep coastal bluff, probably because under current conditions it is rarely subject to wave attack and so surficial processes dominate the erosion of the bluff. In fact, I have used photographs of the bluff only a few lots downcoast of the subject site to illustrate this concept in talks. Reference (3) is a review of borings reported on in reference (1) and concludes that the borings "encountered silty sand, San Pedro sand, pebbles, and man-placed sand (fill) but no formational materials that would indicate the presence of a wave-cut coastal bluff, sea cliff, or escarpment on (in) the slope." Whether or not a slope is wave cut can in no way be determined, however, from an examination of the materials making up the slope. It is common in California to have steep bluffs cut in unconsolidated sand dunes (such as in southern Monterey Bay). At this location, marine processes are subordinate to subaerial processes, so that the slope is much less steep (see Emory and Kuhn, 1982). Clearly, though, the slope is related to marine erosion in the recent geologic past.

The term "coastal bluff" is not defined in the American Geological Institute's *Glossary of Geology*, the standard source for definitions of geologic terms. But the definition for "bluff" is given as:

(a) A high bank or bold headland with a broad, precipitous, sometimes rounded cliff face overlooking a plain or body of water; esp. on the outside of a stream meander; a *river bluff*. (b) Any cliff with a steep broad face.

And the adjective "coastal" is defined as:

Pertaining to a coast; bordering a coast, or located on or near a coast, as *coastal waters*, *coastal zone management*, or *coastal shipping routes*.

In my opinion, the slope on the subject property clearly meets both definitions. The term "coastal bluff" is defined in the Commission's Administrative Regulations (CCR Title 14 § 13577 (h)), at least for purposes of defining the Commission's jurisdiction:

...Coastal bluff shall mean:

- (1) those bluffs, the toe of which is now or was historically (generally within the last 200 years) subject to marine erosion; and
- (2) those bluffs, the toe of which is not now or was not historically subject to marine erosion, but the toe of which lies within an area otherwise identified in Public Resources Code Section 30603(a)(1) or (a)(2).

For reference, PRC 30603(a)(1) and (2) are as follows:

(1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance.

(2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff.

In my opinion, the slope at the property meets the first definition in § 13577 (h). Even if it did not, however, it clearly meets the second definition.

Finally, on a practical level, I note that this relatively steep slope separates a generally flat upland area adjacent to the dissected uplands from the gently sloping beach. The Commission has previously defined the same slope, only a few lots south of the subject site, as a bluff face (see CDP 5-01-018, Conger), and the bold headland is a dramatic landform as seen from the beach (Mark Johnsson, 2004, Exhibit 12.)

The applicant's representative also consulted with the Coastal Commission's mapping staff, in response to this issue. Jon van Coops of the Commission's Mapping Unit has responded, again indicating that when determining the boundaries of the appeal area, staff considers this area a bluff (Exhibit 13, see also Exhibit 14 for a USGS discussion of the matter.)

In the 1970's the previous owner of this property, Robert Hood, appealed an action on this property to the State Commission. The appeal included the contention that the property was not a bluff (Appeal 187-75; P75-5490). The State Commission found no substantial issue with the Regional Commission's action, which was based on its consideration of the "Torrance Bluffs" as an acquisition site. After the State Commission removed the Torrance Bluffs from the acquisition list, based in part on the City of Torrance's letter indicating that (1) the bluffs were hazardous for recreational use and (2) access to the beach was assured in its settlement with the landowners, the Regional Commission approved a request for a single family house on this lot. In all the subsequent correspondence from all parties the landform was identified as a bluff. (Exhibits 17-19)

In addition, other facts do not support the applicant's contentions

- 1) The Torrance LCP, which was approved with suggested modifications in the early 1980's, although never effectively certified, describes these lots as a bluff.
- 2) The geologists employed to examine other lots on either side of the property describe the landform as a bluff.
- 3) In other reports and geologic reviews the bluff is consistently described as a bluff.

Finally, the Coastal Act protects the visual quality of public recreation areas. While the Land Use Plan discussion of views centers on views from private homes, the Land Use Plan also discusses views to and along Torrance beach, and includes drawings of the

view along Torrance beach, with the cliffs rising up as the backdrop of the beach. In conclusion, the Commission finds that the issue raised concerning whether or not Torrance bluffs is a bluff is irrelevant and not consistent with the Commission's past actions.

### **C. Scenic Resources/Community Character & Cumulative Adverse Impacts**

The proposed development consisting of a concrete path that extends down the face of a coastal bluff, a two-level concrete patio and a 910 square foot, 13-foot high shade structure and a storage locker, planters and fire pit near the toe of the bluff is inconsistent with the following Coastal Act policy:

Section 30251 of the Coastal Act states, in part:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.*

While some bluff faces in southern California have been subdivided and developed, development generally does not extend down the Torrance bluffs. The bluffs extend from about 60 feet high at the north end to almost one hundred twenty feet high as the coast curves toward Palos Verdes. The bluff also becomes steeper, changing from a 2:1 slope covered with dune sand to a rocky cliff. From the beach, the roofs of some of the houses on the top of the bluff, parts of the rear walls of those houses and the edges of some patios are visible. With few exceptions, there is little development along the face of the Torrance bluffs. The project site is located near the northern end of the 28 residential bluff top lots (Exhibit 2, 3). The eight northernmost lots include one of the pre-Coastal Act stairways, two of the permitted stairways, three of the unpermitted stairways (including the stairways subject to the present application) and all four unpermitted cabañas. Due to the lower height of the bluffs, on the northern most lots the seaward side of the houses and their decks are more visible from the beach.

As described earlier in the permit history section, ten bluff face stairs or footpaths exist throughout the 28 bluff top lots, four of which are unpermitted. On the adjacent lot and on the lot two lots to the north of this development the Commission permitted stairways and decks that extend to the toe of the bluff (5-85-755, 5-90-1041-A3). Bluff face development on the northern most lot (417 Paseo de la Playa) occurred before passage of the California Coastal Act and was therefore never subject to the requirements of, or review under, the Coastal Act. There are no coastal development permits for lots 521 to 609 (to the north of the project site). Single-family homes existed on these lots prior to establishment of the Coastal Act. Except for the lots described above, bluff face development either does not exist or is unpermitted development. The third permitted

hardened accessway is halfway down the row of houses at 515 Paseo de la Playa; the two other pre-coastal stairways are located at 601 and 627 Paseo de la Playa, near the Palos Verdes Estates boundary.

Even with these exceptions, the bluff face still resembles the bluff face shown in the sketch in the proposed 1981 LUP, irregular cliffs overlain by blown sand, vegetated with a mixture of ice plant and native plants. The roofs and rear windows of some of the houses and the edges of decks are visible from the beach, but generally the bluff front appears undisturbed. Development along the bluffs must be sited and designed to protect views to and along the beach and to minimize the alteration of excising natural landforms. New development must also be sited and designed to be visually compatible with the relatively undisturbed character of the surrounding area.

The proposed project is located on the bluff face immediately adjacent to the public beach. The bluff face at this site is highly visible from the sandy beach. The applicant requests after-the-fact approval to construct a hardened walkway, patios, planters, storage lockers and trellis on the bluff face. The applicant proposes to excavate a notch in the bluff (38 cubic yards) to accommodate the patio where the shade structure is now located that will be supported by a five-foot high concrete retaining wall. The applicant now proposes to demolish the shade structure and replace it with a trellis (still supported by three concrete columns). The patios will be constructed with five-inch thick reinforced concrete leveled pads cut into the bluff, requiring about 38 cubic yards of grading also. Some materials were removed to accommodate the patios. Short timber retaining walls will support the walkway and the patio. Subsurface drainage structures at the turns of the ramp will divert water from the face of the bluff to an outlet at the toe. The applicant proposes to mitigate the view impacts of the structure by planting native vines (California rose) to cover the shade structure and by coloring the concrete path.

a. Landform Alteration

The Coastal Act requires new development to be sited to “*minimize the alteration of natural land forms.*” The proposed project would be located along a coastal bluff. The existing bluff is a natural landform visible from public vantage points such as the adjacent beach. Any alteration of this landform would affect views to and along the public beach.

b. Community Character

Pursuant to Section 30251 of the Coastal Act, new development must be visually compatible with the surrounding area. In addition, Section 30253 (5) requires the protection of “*special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.*” The proposed project would result in a visible intensification of use of the site as compared to its undeveloped state (See Exhibit 4, 5, 6.) The lots adjacent to and one lot north of the proposed project have stairways, walls and decks approved in

the mid 80's and 90's, the lot five lots to the north of the project has a pre-coastal improved pathway and patio. The lot located on the third lot to the north of the subject property has an unpermitted hardened accessway, as does the second lot to the north and the subject lot. Four lots, including the lot 5 lots to the north, the lot two lots to the north, the lot adjacent to and north of the subject lot and the subject lot have unpermitted structures (See Exhibits 3, 23.) The second tot to the south of this lot has an unpermitted stairway, as do two lots at the extreme southern end of the row of lots. Even so, the overall appearance of the bluff as a whole (all 28 lots), even in the northern 8 lots is natural and undeveloped (Exhibits 4, 8). Since the 80's and early 90's, the Commission has learned a great deal about the degrading effects to bluffs caused by constructing structures and/or walls on bluff faces, including adverse impacts to public views and coastal community character.

The project site is immediately inland of Torrance public beach, which serves as a popular visitor destination point for recreational uses. The existing patios, shade structure subject to this application are towards the base of the bluff, immediately adjacent to the public beach. Approximately 500 feet to the north of the site are a public park, beach parking lot, and pedestrian access ways that extend from the street and parking lot to the beach. Just north of the public park is Redondo Beach. There is a public beach accessway and a public parking lot approximately  $\frac{3}{4}$  of a mile to the south, in Palos Verdes Estates. Intensified private development along the bluff face will adversely impact the visual quality of the subject area, and will do so in a manner inconsistent with the community character, inconsistent with Sections 30251 and 30253 of the Coastal Act.

c. Cumulative Impacts

Section 30250(a) of the Coastal Act requires that new development be located where it will not have significant cumulative adverse effects on coastal resources. As described earlier and identified in Exhibits 23 and 24 the majority of development along Paseo de la Playa is located on the bluff top. The proposed bluff walkway, shade structure, patios and ancillary structures would set a precedent for future development to intensify bluff face development not only on the northern eight lots but along the entire bluff face. Over time, incremental impacts can have a significant cumulative adverse visual impact. Other similarly situated property owners may begin to request authority for new construction on the bluff face, thus contributing to cumulative adverse visual impacts.

Conclusion

The Commission finds that the project, as currently proposed, is not sited and designed to protect scenic and visual qualities of the site as an area of public importance. Denial of the proposed project would preserve existing scenic resources and would be consistent with preserving the existing community character where approved (or pre-coastal) development occurs solely at the top of the coastal bluff (on 22 out of 28 lots). The

alteration of the bluff from construction of the paved path, trellis, retaining walls, planters, beach level planter and two-level patio would result in an adverse visual effect when viewed from public vantage points along the beach. The applicant disagrees, indicating that the landscaping will make it impossible to see the walkway and trellis. However, applicant's proposed mitigation of the visual impacts raises issues. Covering the existing property line fence with plastic sheeting and installing vines, which must be irrigated, at the toe of the bluff, have problems of their own –irrigated plants are inconsistent with the habitat of the bluff, and black (or other colored) plastic sheeting has visual impacts of its own. Moreover, when plastic degrades into small pieces it is hazardous to marine life.

Allowing the proposed project would also lead to seaward encroachment of new development in an area where additional unpermitted development has occurred and threatens to affect the community character. The Commission finds that the proposed project would result in the alteration of natural landforms and would not be visually compatible with the character of the surrounding area. Consequently, the proposed project would increase adverse impacts upon visual quality in the subject area. Therefore, the Commission finds that the proposed project is inconsistent with Section 30251 of the Coastal Act and therefore must be denied. Denial of the project is consistent with the Commission's recent action on applications 5-01-018 (Conger), where the Commission approved ancillary structures that were located above the historic top of the bluff, but rejected all development seaward of that line; and 5-04-328(Carey), both instances where the Commission denied bluff face stairs.

#### D. Hazards

Section 30253 of the Coastal Act states, in pertinent part:

*New development shall:*

- (1) *Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) *Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Development on a coastal bluff is inherently risky due to the potential for bluff failure. Blu development poses potential adverse impacts to the geologic stability of bluffs and the stability of residential structures and ancillary improvements. In general, bluff instability is caused by environmental factors and impacts caused by man. Environmental factors include seismicity, wave attack, drying and wetting of soils, wind erosion, salt spray erosion, rodent burrowing, percolation of rain water, poorly structured bedding and soils conducive to erosion. Factors attributed to man include bluff over steepening from cutting roads and railroad tracks, irrigation, over-watering, building too close to the bluff edge,

grading into the bluff, improper site drainage, use of impermeable surfaces to increase runoff, use of water-dependent vegetation, pedestrian or vehicular movement across the bluff top, face and toe, and breaks in water or sewage lines.

### **Site Conditions and Geotechnical Conclusions**

As described in the applicant's technical reports, and in other reports on nearby lots, the bluffs in this area consist of sandy material at the north end, slowly being displaced by higher, rocky material as the bluffs extend toward the Palos Verdes Peninsula. The applicant has provide a geologic report that indicates that consistent with former reports on the property the bluff consists of blown sand over Pleistocene dunes. It notes that several lots to the south, Miocene shales are exposed. The report indicates that the surface materials are subject to slippage and erosion and includes a number of recommendations concerning drainage. It indicates that the lot is grossly stable, but cautions that as the shade structure may be considered a structure that is not regularly occupied and thus need not be examined for seismic safety (Exhibit 16).

The project as redesigned and evaluated by the applicant's consultants includes extensive measures to stabilize the development. The applicant 's coastal engineer listed the features planned to assure the safety of the existing and proposed patio, walkway, and shade structure.

"RESIDENTIAL LOT AND PATIO IMPROVEMENTS AT 437 PASEO DE LA PLAYA. The subject property consists of a trapezoidal residential lot that was subdivided, graded, and developed in the 1970's with a two-story single-family home and appurtenances. The lot measures ~60 feet along its seaward (westerly) side, ~446 feet n the north, ~64 feet on the east (street side), and ~423 feet on the south sides. (See, Exhibit 3, Lanco Engineering, surveyed Topographical Map, 437 Paseo de la Playa, Torrance, 2-26-04). The lot slopes in from approximately +130 feet MSL, along the street, to about +14.8 feet MSL, along the westerly property line, and is fronted by a slope vegetated by primarily non-native vegetation, a wide sandy beach (approximately 200 feet wide), and the Pacific Ocean. The previously approved two-story single-family home, garage, pool/spa, and decks on the subject property are located on the graded pad at the top of the slope, above elevation - +99 feet MSL. A path, consisting of a combination of wooden, wood-bordered concrete, and flagstone pavement extends from near the top of slope, near elevation +97 feet down to the toe of slope, near elevation -+17 feet MSL and to the gate in the fence at the western property line, near elevation -+15<sup>8</sup> feet MSL. ... A finish color consistent with the restored and enhanced natural landscape is proposed to be applied to the path, and native vegetation is proposed to be planted on the slope for enhanced soil/sand stability and to replace various existing non-native plants, which are to be removed. (K&AES, 2003.)

A two-tier patio is located at, and partly notched into, the toe of the slope to the north of the path. ... The lower patio, -600 SF at elevation -+20.5 feet MSL, is bordered on the west and south by two parallel garden walls, ~3-5 feet in height, that define an attractively

<sup>8</sup> Staff has relied on the figures on the survey map to get elevation 13.

planted 3 feet wide space. Approximately 40% of this patio consists of flagstones set in grass, and the remainder is paved with concrete. A small grate provides drainage to ground in the northwesterly corner of the lot. The rear (upper) tier of the patio (750 SF) has a -6 inch thick concrete floor, with small drain grates that tie into the discharge to ground. The rear patio steps up 3 feet behind a retaining wall and 2 feet-wide planter border on its westerly side. The retaining/garden wall extends ~10 feet to the east along the northerly and southerly edges of this patio. Three columns on the west, and a combination 5 feet high retaining and wood wall above it, with ~6 feet long wing walls, support a wooden roof that provides shade over the rear patio, as well as space for a small (~25 SF) secure enclosure for recreational equipment. The shade structure contains no bedroom, kitchen, or bathroom. The concrete columns are built with four #7 rebar (vertical) and #3 ties on 8 inches centers, and supported by a 24"x24"x30' concrete grade beam, with two #7 rebar at the top and bottom, and with #3 closed stirrups on 12 inch centers. (SMP, 2004.) The beam and three columns, in turn, are supported, respectively, by 48"x48"x24" thick concrete pads and four #5 bars, as shown on SMP's Sheet No. ... The lower tier patio is completely open to the west and south; the upper tier patio is open to the west and south except for the 18-inch columns and the rear wing walls. The columns and roof of the shade structure are proposed to be vegetated with salt-spray tolerant climbing native vegetation to enhance their aesthetic and functional compatibility with the adjacent restored slope to the east. (K&AES, 2003.) To meet seismic loading standards, two 6 feet long, 8 inch wide sheer walls are proposed to be built, in alignment with the northerly and southerly columns, from the rear retaining wall forward, and the roof of the shade structure along the northerly property line is proposed to be reduced by ~35 SF to fully meet the City's 3 foot setback requirement. (SMP, 2004.) (Skelly Engineering, 2004)

Regarding the general site conditions, the project geologists, Cotton, Shires & Associates state in part:

#### Evidence of Past or Potential landslide Conditions

No indications of deep-seated or shallow slope instability' were observed at, or immediately adjacent to, the project site during our site reconnaissance on November 11, 2003 or during our site visits on February 17 and 18, 2004. ... In addition, aerial photographs of the subject property and its immediate surroundings show no evidence of landsliding or slope instability. Review of pertinent geologic maps and reports also reveal that no previous slope instability

#### 9.0 CONCLUSION

Section 30253 of the Coastal Act of 1976 provides, in relevant part, that "New development shall: (1) Minimize risks to life and property in areas of high geologic, flood and fire hazard, and (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs". Based on our evaluation of the site conditions, and the understanding that the recommended actions (mitigations) detailed herein will be incorporated into the comprehensive project description for submittal to Coastal Commission as part of the coastal development permit application and then, subsequently implemented, we conclude that: a) the improvements do not pose a risk to life and property, b) the improvements do not adversely affect stability or structural integrity of the

site, c) the improvements do not contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area, and d) the improvements do not require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. ( Cotton, Shires, and Associates, Inc., See also Exhibit 16)

In response to these reports, staff geologist Mark Johnsson indicates:

Reference (1(Cotton Shires)) contains general information on the site geology, and specific information regarding site stability in terms of bluff recession, surficial and global slope stability, ground and surface water conditions, seismicity, and seismic slope stability. The report indicates that the site is capped by stabilized Late Pleistocene dune sands 3 to 13 feet thick, that overly the Early Pleistocene San Pedro sand. Locally, the San Pedro sand is overlain directly by artificial fill, where it is retained by landscaping walls on the lower part of the bluff.

No evidence of surficial or global slope instabilities were noted at the site, but instability has been observed at properties just downcoast. A quantitative slope stability analysis, performed using soil strength parameters derived from laboratory testing of samples collected at the site, yielded a minimum factor of safety against deep-seated failures of 1.55 for the static condition and 1.01 for the pseudostatic condition. The latter is below the usual criteria of 1.1 required to demonstrate slope stability under seismic loading, but I note that a relatively high (i.e., conservative) value of 0.21 g was used for the earthquake loading coefficient; 0.15 is used more commonly in conjunction with a factor of safety of 1.1 to demonstrate slope stability. A Newmark-type analysis of expected seismic displacement during a seismic event yielded a displacement of 5.86 cm. A displacement of this magnitude would adversely affect structures such as buildings and retaining walls. Finally, the report contains an analysis of surficial slope stability using the methods of infinite slopes. No quantitative results are presented in the report, but the report does conclude that "the materials exposed within the slope face may be susceptible to shallow slope failures, particularly in localized oversteepened areas that may be caused by uncontrolled erosion, improper grading, or other anthropogenic processes." The report makes recommendations for drainage controls to minimize surficial instability.

I concur with the principal conclusion of the report that the slope is grossly stable under static conditions, might be expected to be marginally unstable under seismic loading, and will likely suffer surficial instabilities unless great care is taken to control runoff on the slope.

The existing patios, shade structure subject to this application are towards the base of the bluff, adjacent to the beach. The Commission finds that the development will be stable but would achieve this stability by hardening portions of the cliff face for the walks and patios and relying on protective devices to support the cliff and protect the structures. The retaining wall at the rear of the structure is necessary to support the bluff behind it, where it has been excavated, and to protect the structure from the weight of the bluff. Under normal conditions, the shade structure will be safe, although it is not designed to survive an earthquake. The project will also require grading for the installation of the retaining walls at the edges for the paths and at the rear of the structure, which is another form of protective device, as well as the installation of the

drains. The shade structure will require concrete columns supported by a grade beam for support. As designed and as proposed, the development will not be unstable. However, the development requires retaining walls, which are a kind of protective device, columns, a grade beam, and grading on the bluff face to achieve this stability. Although the applicant's consultant has indicated that the project would ensure structural stability, the Commission finds that the proposed development would not be consistent with Coastal Act Section 30253 (2) because it requires protective devices that would substantially alter natural landforms along bluffs and cliffs.

#### E. Beach Erosion and beach processes

Section 30235 states:

**Section 30235 Construction altering natural shoreline**

*Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.*

According to the applicant's coastal engineer, the project will not be subject to wave attack and will not require a structure on the beach to protect it from wave erosion. This is because the beach has been artificially incremented in the past, and is now protected by structures such as the Redondo Beach breakwater. This stability, in the view of the applicant's coastal engineer should last many years into the future (Exhibit 15).

The applicant's coastal engineer, David Skelly, states:

A littoral cell is a coastal compartment that contains a complete cycle of littoral sedimentation including sources, transport pathways and sediment sinks. The Santa Monica littoral cell extends from Point Dume to Palos Verdes Point, a distance of 40 miles. Most of the shoreline in his littoral cell has been essentially stabilized by man. The local beaches were primarily made by man through nourishment as a result of major shoreline civil works projects (Hyperion treatment plant, Marina del Rey King Harbor) etc. The upcoast and down coast movement of sand along the shoreline is mostly controlled by groins, breakwaters and jetties and is generally to the south. A review of aerial photographs shows little if any overall shoreline retreat.

... As addressed more fully below, a review of aerial photographs taken over the last 25 years shows little, if any, overall shoreline retreat along this section of shoreline, principally because when the sand reaches the nearby upcoast groin, it is trapped and therefore stabilizes the beach. For the purpose of this hazard analysis, a very conservative long-term estimate of the shoreline retreat rate of 0.5 feet per year is used. The wide sandy

beach in front of the site is normally 200 feet wide and thus provides adequate protection for the site and the South Coast Bike Trail at the base of the slope upcoast from the subject property. An interview with a long term resident revealed that wave runup has not reached the subject property in at least the last 25 years. The man-made beach in this area is subject to some seasonal erosion and accretion, and potentially also subject over the 75-year life of new development to major erosion that is associated with extreme (>200 year) storm events, which may erode the beach back to near the toe of the slope. (Skelly, 2004)

With respect to this report, staff geologist Mark Johnsson states:

The report goes on to conclude that there has been no overall shoreline retreat at the site over the last four decades, that a conservative estimate of future beach erosion would reduce the beach width by about 50 feet in 100 years, and that the toe of the slope is not likely to be subject to damage even from the most extreme beach erosion and wave attack over the expected economic life of the improvements. I concur with these assessments. I do note, however, that the width of the beach is at least in part due to artificial beach nourishment upcoast, that resulted in a dramatic increase in beach width between 1946 and the present (Leidersdorf et al., 1994, Mark Johnsson, Staff Geologist, see also Exhibit 12).

Historically the sandy bluffs immediately inland of this beach have suffered from sloughing and collapse. While sloughing and collapse have been hazardous for beach visitors climbing on the bluffs, it has resulted in replenishment of the beach. The proposed construction of structures on the bluff face adjacent to the beach includes measures to prevent erosion and sloughing (Exhibits 5, 6 & 16). Without some erosion of the material from the bluffs, sand and other material from the bluffs will not be available as a source of replenishment of sand for the beaches. Section 30235 states that cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures. However, the applicant is requesting several retaining walls to protect several new or unpermitted structures: the walkway, the patio, and the shade structure. This is inconsistent with Section 30235, which requires minimal interference with natural processes related to shoreline sand supply, and which does not require authorization of any protective devices except to protect an existing structure (meaning an existing *legal* structure), or in other cases not relevant here. There is no contention that any of these structures existed before 2002, or received coastal development permits. There is similarly no evidence that these proposed walls are necessary to protect the house, which is located on the top of the bluff. Therefore, the project as proposed, includes a retaining wall that is not necessary to protect the existing structure that was permitted. Retaining walls reduce the amount of sand available to replenish this beach by "stabilizing" the bluff. The project as proposed is therefore not required to be permitted pursuant to Section 30235 of the Coastal Act.

#### **F. Public Access and Recreation**

Sections 30210, 30220, and 30221 of the Coastal Act, among other sections, contain policies regarding public access to the shoreline. In addition, Section 30240 addresses appropriate development adjacent to parks and recreation areas.

Section 30210 states:

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30220 states:

*Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

Section 30221 states:

*Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

Section 30240 (b) states:

*Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The proposed project is adjacent to a public beach. The project may have indirect impacts on public recreation by moving the line of private structures closer to the public areas, and, as noted above, by having long term impacts on sand supply. The project site is located along a lower portion of a bluff face and the toe of a bluff on the seaward side of Paseo de la Playa, which is the first public road immediately inland of Torrance Beach. The project site is highly visible from the sandy public beach. The pattern of development along this segment of Paseo de la Playa is such that structures are sited at the top of the bluff, while the bluff face remains largely undisturbed and vegetated. The bluff faces, generally fenced at the toe of the bluff, provide a buffer between the public beach and the private residential uses. As discussed previously, only three properties along this stretch of Paseo de la Playa have permitted accessory structures or retaining walls at the toe of the slope. Two consist of concrete retaining walls and one consists of a pre-coastal terrace located about thirty feet above the toe of a bluff, and what appears to be a volley ball court at sand level (417 Paseo de la Playa). Although several lots have stairways or paved

walkways traversing the bluff face (see table above) and some have unpermitted development at the toe of the bluff (currently under investigation by the Commission's Enforcement staff), the overall appearance of the bluff in this area is natural and undeveloped (Exhibit 24). Only one of the three permitted stairways, one permitted to accommodate easier access, includes highly visible switchbacks (at 429 Paseo de la Playa, 5-85-755). This highly visible stairway is one lot away from the present project. However, this stairway was not built according to the approved plans, thus increasing its visual impact. There is also a stairway on the adjacent lot to the north, (433 Paseo de la Playa), built to provide access to the bluff face in order to maintain what was offered as part of revegetation and erosion reconstruction program. This stairway is located adjacent to the property line and is sited next to an existing wall so as not to be obtrusive (5-90-1041A3).

Public access is available directly seaward of the toe of the bluff at Torrance Beach. Development at this site, if approved, must be sited and designed to be compatible with Section 30240 (b) of the Coastal Act. Section 30240 (b) of the Coastal Act states that development in areas adjacent to parks and recreation areas shall be sited and designed to prevent impacts that would significantly degrade those areas or be incompatible with their continuance. It is necessary to ensure that new development be sited and designed to prevent seaward encroachment of development that would impact public access to coastal resources. The proposed project, as submitted, would be a significant new development encroaching seaward.

As described previously, the applicant is requesting after-the-fact approval for a 910 square foot, 13-foot high wooden/concrete structure at the toe of the bluff just inland of the public beach. While the requested structure does not physically impede public access at the toe of the slope or to adjacent beach area, new private structures adjacent to the beach often facilitate private use of the public beach adjacent to the new private structures. In addition, discussions of coastal erosion often point out that the "hardening" of coastal bluffs contributes to the loss of beach sand by reducing the supply of material slowly eroding from the face of the bluff (Terchunian, A.V., 1988 and Department of Boating and Waterways and State Coastal Conservancy, 2002). Loss of sand means a narrower beach, which means loss of a coastal resource. As discussed previously, fewer than 10% have permitted patios and/or retaining walls at the toe of the slope along this stretch of Paseo de la Playa. Two consist of concrete retaining walls and one consists of a pre-coastal patio twenty feet above the toe of the bluff at the lower portion of the bluff (417 Paseo de la Playa). There are no approved shade structures. A growing number of property owners along Paseo de la Playa may seek to intensify use of their properties along the face and toe of the bluff if the proposed project is approved. Increased intensification of private development located along the coastal bluffs adjacent to Torrance Beach will result in a less inviting beach appearance to the general public discouraging public use of the beach. The Commission finds that the area directly seaward of the development is a publicly owned recreation area and that the proposed project would decrease the distance from the public beach to private residential uses, thereby significantly degrading the area for public recreation and would therefore be inconsistent

with Sections 30210, 30220, 30221 and 30240 (b). Therefore, the Commission finds that the proposed project is inconsistent with the public access policies and Section 30240 (b) of the Coastal Act and must be denied.

## **G Habitat**

Section 30240 of the Coastal Act states:

*(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*

*(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The host plant for the El Segundo blue butterfly (*Euphilotes bernardino allyni*), an endangered species, is located in patches throughout the bluff face on many of the lots along Paseo de la Playa. The United States Fish and Wildlife Service (USFWS) provided the Commission written notice of this discovery in 1995 (Letter, Gail Kobetich, 1995). Confirmed by the USFWS and the Commission's former staff ecologist Jon Allen, both the host plant and the butterfly were identified on the lower levels of a nearby lot (5-01-018 and 5-01-409).

This proposed development is three lots away from a lot, 501 Paseo de la Playa where the butterfly and its habitat has been identified. Habitat that supports an endangered species conforms to the Coastal Act definition of an environmentally sensitive habitat area. There is little evidence that this particular lot has supported environmentally sensitive habitat in the recent past. Nineteen-seventies geology reports indicate that the predominant vegetation on the site is ice plant. The proposed removal of irrigation and introduced invasive species from the bluff face and replacement with coastal bluff scrub vegetation, more specifically, with *Eriogonum parvifolium* is compatible with continuance of this habitat on nearby lots.

The applicant, as mitigation for the present project, proposes to remove invasive plants from the bluff face that might invade and displace adjacent habitat, and to replace them with no fewer than 175 plants of the host food plant. The larvae of the El Segundo blue feed on *Eriogonum parvifolium*, and pupate in loose sandy soils under the surface of the soils (Mattoni, 1985, personal communication). The *Eriogonum*, like many dune plants expands radial through loose soils. Hardening or stabilizing the bluff, or irrigating it is likely to be inconsistent with these processes. The USFWS has reviewed this project and has approved the revegetation with conditions that 175 *Eriogonum parvifolium* plants be installed. The applicant has provided a revised plan as part of this project that conforms

to the requirements of the USFWS (Exhibit 9 & 10). Installation of *Eriogonum fasciculatum*, as also proposed by the applicant, when attempted at LAWA, was inconsistent with the preservation of the El Segundo bluff butterfly because it encouraged rival species. The applicant indicates, however, that there can be no guarantee that the plants will eventually serve as hosts for the butterfly because competing predatory insects attracted by introduced plants, such as Argentine ants, feed on the larvae.

Even if butterfly habitat did not exist on this particular site, it has been found in nearby areas along this bluff. While the applicant's proposal to re-establish food plants for the El Segundo blue butterfly has been found acceptable to the staff ecologist John Dixon and by the United States Fish and Wildlife Service, the revegetation is offered only conditionally along with the construction of the walkway and other structures (Exhibit 11). In addition, the Commission cannot make the same agreement that the USFWS makes with regard to revegetation projects: the USFWS can enter into a safe harbor agreement, which permits developers of voluntary restoration projects to remove the vegetation. The Commission cannot commit any further Commission in the event 1) the habitat installation is successful (and therefore ESHA), and 2) a future owner wishes to remove the vegetation. In that event, the site would be subject to the requirements of Coastal Act Section 30240.

Allowing the proposed structures would result in allowing a new pattern of development on the bluff face. Allowing a new pattern of development, which brings development and associated human activity closer to existing habitat on the face and toe of the coastal bluff will have a cumulative impact on the El Segundo blue habitat and/or the butterfly itself. The Commission recognizes that approving the project described herein may set a precedent for future projects on other properties along this bluff, and the cumulative impacts of that would be severe in degrading what is left of the butterfly habitat in this area. The proposed development may have replaced environmentally sensitive habitat areas, is disruptive of nearby sensitive habitat values, and would, if proliferated, be incompatible with the continuance of those areas. Therefore the Commission finds that the proposed project is inconsistent with Section 30240 of the Coastal Act, and the therefore denying the project.

#### **H. Unpermitted Development**

The development that occurred on site without benefit of the required coastal development permit includes the construction of a 910 square foot, 13-foot high covered shade structure a retaining wall and concrete pillars, grading, drainage structures, a paved walkway on the bluff slope, and a two-level concrete patio and other structures at the toe of the bluff. All of this development is located on the bluff face and adjacent to the public beach and is visible from the public beach. The applicant asserts that because an irregular pioneered path crossed the site in the path, that some of this work amounted to repaving an existing path. However, even paving an existing path requires a coastal development permit, and the applicant has not submitted evidence that any pre-existing

path was followed the same route down the bluff in the same location, or was the same width as the proposed path. This path, for example meanders in engineered curves; the previous paths cut straight across and down the slope. (Exhibits 4, 5, 8a, and 8b.)

In conjunction with this development, the applicant has installed an unpermitted irrigation system and high water use landscaping, including some invasive plants on the bluff face, increasing the likelihood of sloughing and erosion and also the likelihood of invasion of nearby habitat areas by introduced plant and animals, including Argentine ants and other predatory insects. The applicant has proposed to remove the irrigation system and these plants, but only in conjunction with approval of the paved walkway, shade structure, and patios. In this case, because the proposed project, including the request for after-the-fact approval of the unpermitted development, would be inconsistent with the Chapter 3 policies of the Coastal Act, staff is recommending denial of this application. The Commission's enforcement division will evaluate further actions to address this matter.

Although construction has taken place prior to submission of this permit application, consideration of the permit application by the Commission has been based solely on the consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. Commission action on this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

## **I. Local Coastal Program**

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms with Chapter 3 policies of the Coastal Act.

On June 18, 1981, the Commission approved with suggested modifications the City of Torrance Land Use Plan (LUP). Torrance identified the beach area as an important resource in its Land Use Plan and included a photographs of the bluffs in is document. However, the City did not accept the modifications, and the certified LUP has lapsed. The area that was not resolved included development standards for the beach and the bluffs; where the boundary line issues were unresolved. Because the City of Torrance does not have a certified LUP, the standard for this review is the Coastal Act.

The construction of the proposed project is inconsistent with the Chapter 3 policies of the Coastal Act discussed previously, specifically Sections 30211, 30235, 30240, 30251 and 30253 of the Coastal Act. Development on the coastal bluff would cause adverse impacts to the natural landforms, the coastal scenic resource, and public access. Section 30235 protects natural shoreline processes. Section 30211 requires that the Commission protect existing public access to the beach, Section 30240 of the Coastal Act states that

development in areas adjacent to parks and recreation areas and habitat areas shall be sited and designed to prevent impacts, which would significantly degrade those areas. Section 30251 of the Coastal Act states that permitted development should minimize landform alteration and visual impacts. Section 30253 of the Coastal Act states that new development should not contribute to significant erosion and geologic instability or be inconsistent with community character. By approving development that is inconsistent with so many aspects of Chapter 3 of the Coastal Act, the proposed development would prejudice the City's ability to prepare a Local Coastal Program for the City of Torrance that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a). Therefore, approval of the project is found inconsistent with Section 30604(a), and the project must be denied.

## **J. Alternatives**

Denial of the proposed project will neither eliminate all economically beneficial or productive use of the applicant's property, nor unreasonably limit the owner's reasonable investment backed expectations of the subject property. The applicant already possesses a substantial residential development of significant economic value of the property. When the Commission approved the existing single family home on the bluff top, development on the face of the bluff was specifically prohibited. In addition, several alternatives to the proposed development exist. Among those alternative developments are the following (though this list is not intended to be, nor is it, comprehensive of the possible alternatives):

1. No Project. This alternative would mean that no changes to the site as it existed before the unpermitted development took place would be approved. The owner would continue to use the existing home and approved accessory structures, which include a four-car garage, an arcade, a swimming pool, and an attached jacuzzi. There would be no disturbance of the bluff face or the toe of the bluff and no seaward encroachment of development. The bluff face would remain as an undeveloped vegetated slope and would be consistent with community character as development occurs at the top of the coastal bluff. The walkway, the retaining walls, the patios, the fire pit, storage locker, and proposed 910 -square foot shade structure located near the western property line, which would diminish the value of the public beach by discouraging public usage, would not be built. There would be an alternate way for the applicant to reach the beach which would be to use the public shared accessway at the County parking lot, about 500 feet (six lots) to the north. This alternative would result in the least amount of adverse effects to the environment.
2. Relocate development. A storage structure located on the bluff top within the vicinity of the pool or added to the existing garage on the landward side of the property would provide a place to safely store beach furniture and/or surfboards and would be easier to access.

3. Approve native bluff revegetation only. The bluff revegetation proposed by the applicant is consistent with the environmental protection policies of the Coastal Act. It would result in a heavily vegetated bluff. The United States Fish and Wildlife Service have approved the revegetation.

4. Approve a consolidated stairway. The applicant, in conjunction with several neighbors, could construct a narrow stairway serving two or three adjoining properties. The applicant could then install native vegetation, but remove the covered shade structures, concrete columns, retaining walls storage lockers, and fire pit. This action would be consistent with direction that the Commission offered the most recent applicant for a bluff face stairway on Torrance each, Tim Carey. (5-03-328, Tim Carey Trust). In Mr. Carey's case, the Commission discussed a shared walkway as a possible alternative. In the Bredesen case, the adjoining neighbor to the south already has an approved stairway along the common property line with this applicant that could be slightly modified to allow both the applicants to reach their re-vegetation projects. Alternatively, the applicant could share with the adjoining property owner to the north, who does not have an approved stairway while either one of these alternatives would have fewer visual impacts and raise fewer conflicts with public access than the proposed project, it would still establish a pattern. While this either one of these alternatives would have fewer visual impacts and raise fewer conflicts with public access than the proposed project, it would still establish a pattern of bluff face stairways and would still require stabilization of the bluff face and the installation of drainage device, and hence raise issues of consistency with the public access, beach protection and visual quality policies of the Coastal Act.

#### **K. California Environmental Quality Act (CEQA)**

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project includes development on the bluff face and at the toe of the bluff. Coastal resources in the general area include scenic views from the public beach and public recreational access. As discussed previously, the majority of development along Paseo de la Playa is located along the bluff top. Allowing the proposed project would lead to bluff face development in an area where a proliferation of beach level structures and bluff face and paved walkways could create a seaward line of private structures on what has been and undeveloped bluff face. The Commission cannot regard the proliferation of unpermitted structures on the seaward face of the bluff as establishing either the community character or a precedent. Additional unpermitted development has occurred

that has encroached seaward and threatens to affect the community character. Over time, incremental impacts can have a significant cumulative adverse visual impact. Approving the project may set a precedent for future projects on other properties along this bluff. The cumulative impact of private structures, patios paved accessways, and stairways along the bluff face would degrade the public's recreational beach experience, and as indicated above, potentially reduce the sand supply available for beach replenishment. Further, on beaches where there is extensive private development adjacent to the public beach, conflicts arise concerning the level and hours of public use of the beach closest to these structures as homeowners attempt to protect their privacy.

As described above, the proposed project would have adverse environmental impacts. There are feasible alternatives or mitigation measures available, as described in the section above that would substantially lessen these significant adverse impacts that the activity will have on the environment. Therefore, the proposed project is not consistent with CEQA or the policies of the Coastal Act because there are feasible alternatives, which would lessen significant adverse impacts. Therefore, the project must be denied.

**SUBSTANTIVE FILE DOCUMENTS:**

1. Coastal Development Permits P-7342 (Hood), 5-97-050 (Kreag) and applicable amendments (Prince), 5-84-187 (Briles), 5-84-187-A (Briles), 5-85-755 (Briles), 5-90-1041 and amendments (Stamegna, Hawthorne Savings and Campbell), P-77-716 (Warren), P-7266 (Bacon), A-80-6753 (Bacon), 5-90-868 (Schreiber), 5-01-018 and 5-01-409 (Conger), 5-85-183 (Hall), 5-90-1079 (Wright), 5-91-697 (Wright), A-79-4879 (McGraw), 5-83-618 (Fire), 5-96-167 (Lichter), 5-01-080 (Palmero); 5-03-328 Tim Carey Trust), .5-03-212 (Bredesen), P-77-716 (Warren) , 5-85-183 (Hall), 5-90-1079 (Wright), 5-91-697 (Wright), A-79-4879; 5-03-328 (Carey), 5-83-618 (Fire).
2. Terchunian, A.V., 1988, *Permitting coastal armoring structures: Can seawalls and beaches coexist?* Journal of Coastal Research, Special Issue No. 4, p. 65-75.
3. United States Geological Survey, Monty A. Hampton and Gary B. Griggs, Editors, Professional Paper 1693, *Formation, Evolution and Stability of Coastal Cliffs -- Status and Trends, pp1-4, Introduction.*
4. *Geologic and Soils Engineering Investigation Proposed Single Family Residence, 437 Paseo de la Playa, Torrance, California for Mr. and Mrs. Robert Hood, (Project No. KB 1935) prepared by Kovacs – Byer and Associates Inc. January 23, 1976.*
5. United States Department of the Interior, United States Fish and Wildlife Service, "*Habitat Restoration and Enhancement Plan, C.G. and V.C. Bredesen Trust Property, 437 Paseo de la Playa Redondo Beach, CA,*" letter signed by Ken Corey for Karen Goebel, November 3, 3004
6. Department of Boating and Waterways and State Coastal Conservancy, 2002, "*California Beach Restoration Study,*" Sacramento, California, [www.dbw.ca.gov/beachreport.htm](http://www.dbw.ca.gov/beachreport.htm).
7. City of Torrance, Aerial photograph, 1978.
8. City of Torrance, Aerial photograph, 1992
9. USGS, 1:40,000 map, Santa Monica Bay, 1893,
10. United States Army Corps of Engineers, 1:62,500 map, Redondo Beach, Quadrangle Sheet, 1944.
11. Cotton, Shires and Associates, Inc., "Geotechnical Investigation and Evaluation, 437 Paseo de la Playa, Torrance, California, " March, 2004.
12. Kelley and Associates, Environmental Sciences, Inc. Native Vegetation Landscaping Plan, 437 Paseo de la Playa, Torrance, Los Angeles County, California, November, 2003,
13. Kelley and Associates, Environmental Sciences, Inc. Native Vegetation Landscaping Plan, 437 Paseo de la Playa, Torrance, Los Angeles County, California, Revised 26 October, 2004
14. Skelley Engineering wave run-up and coastal hazard study, 437 Paseo de la Playa Redondo Beach, CA" June, 2004.

15. SMP inc. Structural Analysis of Existing Detached Palapa Patio Cover, 437 Paseo de la Playa Torrance ca 90277, " 5-06-04, 8 pages.
16. David Skelly, Geosoils, Memorandum to Mr. Chris Bredesen, November 30, 2004.
17. Stanley E. Remelmeyer, City Attorney, City of Torrance, 1976. Position Paper of the City of Torrance Regarding the Proposal to Acquire Eight (8) Blufftop Parcels at Torrance; Requesting Deletion from the Acquisition List of the Proposal to Acquire Eight (8) Blufftop parcels at Torrance Beach;
18. Kelley, and Associates, Environmental Sciences, Inc. Supplemental Habitat Enhancement Plan, Native Vegetation Landscape Plan, seaward slope, 437 Paseo de la Playa, Torrance, Los Angeles County, California
19. Kelley and Associates, Environmental Services, Inc., "Native Vegetation Landscaping Plan, 437 Paseo de la Playa, Torrance, Los Angeles County, California, " November 2003.
20. Kelley and Associates, Environmental Sciences, Inc., Supplemental Habitat Enhancement Plan and Supporting Documents, 11 October 2004
21. Cotton, Shires & Associates, Inc., Geotechnical Investigation and Evaluation, 437 Paseo de la Playa, Torrance California, March, 2004
22. Skelly Engineering, "Wave Run-up and Coastal Hazard Study, 437 Paseo de la Playa, Redondo Beach, CA, " June, 2004,
23. SMP, Inc., "Structural Analysis of Existing Detached Palapa Patio Cover, 437 Paseo de la Playa, Torrance, Ca. 90277." CDP A-2019

## CALIFORNIA COASTAL COMMISSION

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SAN FRANCISCO, CA 94105-3219  
VOICE (415) 904-5200  
FAX (415) 904-5400  
TDD (415) 597-5885



SENT VIA CERTIFIED AND REGULAR MAIL  
(Article No. 7005 0390 0002 6832 0418)

January 18, 2006

Chris G. Bredesen, Trustee  
Virginia C. Bredesen, Trustee  
C.G. & V.C. Bredesen Trust  
437 Paseo Del La Playa  
Torrance, CA 90277

Subject: **Notice of Intent to Commence Cease and Desist Order  
and Restoration Order Proceedings and to Record a  
Notice of Violation of the Coastal Act**

Violation File No.: V-5-01-037

Property Location: 437 Paseo De La Playa, Torrance; Los Angeles County  
(APN 7512-003-022)

Violation Description: Unpermitted development, including but not limited to the  
construction of a walkway, irrigation system, shade  
structure, patio, fire pit, storage lockers, and concrete  
planters on the face of a coastal bluff

Dear Mr. and Mrs. Bredesen:

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to commence proceedings for the issuance of Cease and Desist and Restoration Orders to compel: 1) removal of unpermitted development from the property; and 2) restoration of impacted areas. Unpermitted development activities were conducted on property that you own, located at 437 Paseo De La Playa, in Torrance, in Los Angeles County ("the property"). The property is a .64-acre property, located approximately 500 feet south of the heavily-used Los Angeles County Torrance Beach Park. The property extends

Exhibit 7  
CCC-06-NOV-01 and CCC-06-CD-02  
and CCC-06-RO-02  
(Bredesen)  
Page 1 of 6

from the bluff top, down the bluff face, to the toe of the bluff. The beach seaward of the toe of the bluff is Torrance Beach, a heavily-used public beach.

Unpermitted development activities conducted on the face of the bluff located seaward of the residence on the property include construction of a four-foot wide concrete and flagstone walkway with handrails, and an irrigation system. Additional unpermitted development activities conducted on the bluff face and/or toe of the bluff include a 910 square-foot shade structure, a 1218 square-foot two-tier concrete and flagstone patio, a fire pit, storage lockers, and concrete planters.

The unpermitted development has altered the natural landforms on the property and has individual and cumulative adverse visual impacts to scenic resources and the character of this popular recreational community. The unpermitted development contributes to erosion and instability of the bluff, and to make it stable would require construction of retaining walls that would cause further significant alteration of natural landforms and interfere with local shoreline sand supply.<sup>1</sup> Thus, the unpermitted development is inconsistent with numerous Coastal Act policies, as explained in detail in the Staff Report for Application Number 5-04-324 adopted by the Commission on June 7, 2005.

The purpose of these enforcement proceedings is to issue a Cease and Desist Order and a Restoration Order. Collectively, the Cease and Desist and Restoration Orders will direct you to 1) remove the unpermitted development from the property and 2) restore areas impacted from the unpermitted development or its removal. I also seek to record a Notice of Violation in this matter to protect prospective purchasers of the property.

### **History of the Violation**

During a site visit on July 6, 2001, Commission staff discovered that construction of a shade structure at the toe of the coastal bluff on the property had been undertaken. On July 24, 2002, you submitted a CDP application, seeking after-the-fact authorization for the shade structure and a storage shed located at the toe of the bluff. This application was incomplete and was immediately returned to you. In December of 2002, upon further investigation, Commission staff determined that a stairway and additional structures had also been constructed on the property without authorization in a CDP.<sup>2</sup> Commission staff sent a Notice of Violation letter to you on March 14, 2003, addressing all of the unpermitted development on the property, and received a second incomplete permit application from you on April 28, 2003. Although you did finally complete the second permit application, you withdrew it before the December 2003 Commission meeting, where the Commission was scheduled to act on the matter. Consequently, Commission staff sent you a second Notice of Violation letter on July 29, 2004. You submitted yet another incomplete permit application on August 12, 2004. Upon completion of the application, Commission staff scheduled the matter to be heard by the Commission at the

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<sup>1</sup> Commission staff is aware of additional unpermitted development on other properties in the area and is currently investigating these matters.

<sup>2</sup> The additional unpermitted development appears in aerial photographs of the property and surrounding areas taken on September 23, 2002.

Commission's February 2005 meeting. The item was postponed and heard during the June 7, 2005 meeting, where it was denied by the Commission. Your subsequent request for reconsideration was withdrawn on October 1, 2005. Since that time, you have taken no action to resolve the violations on your property, and consequently, additional enforcement action is now necessary.

### Notice of Violation

The Commission's authority to record a Notice of Violation is set forth in Section 30812 of the Coastal Act, which states the following:

*(a) Whenever the executive director of the commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the executive director may cause a notification of intention to record a notice of violation to be mailed by regular and certified mail to the owner of the real property at issue, describing the real property, identifying the nature of the violation, naming the owners thereof, and stating that if the owner objects to the filing of a notice of violation, an opportunity will be given to the owner to present evidence on the issue of whether a violation has occurred.*

I am issuing this notice of intent to record a Notice of Violation because the development described above has occurred on the property in violation of the Coastal Act. This determination is based on review of 1) the Commission findings with respect to the denial of CDP No. 5-04-324 and related documents, 2) observations of the site by Commission staff on July 6, 2001, and 3) photographs including those taken by Commission staff on July 6, 2001 and aerial photographs.

In Notice of Violation letters dated March 14, 2003 and July 8, 2004, Commission staff notified you of possible enforcement under the Coastal Act, including the possibility of the recordation of a Notice of Violation against your property. If you object to the recordation of a Notice of Violation in this matter and wish to present evidence to the Coastal Commission at a public hearing on the issue of whether a violation has occurred, **you must submit a specific objection to the recordation, in writing, within 20 days of the postmarked mailing of this notification.**<sup>3</sup> If, within 20 days of mailing of this notification, you fail to inform the Commission of your objection to recording a Notice of Violation, I shall record the Notice of Violation in the Los Angeles County Recorder's office as provided for under Section 30812 of the Coastal Act. The Notice of Violation will become part of the chain of title of the subject property, and will be subject to review by potential buyers.

If you object to the recordation of a Notice of Violation in this matter and wish to present evidence on the issue of whether a violation has occurred, you must inform me, in writing, no later than Tuesday, February 7, 2006 of such an objection. In your written response, please include the evidence you wish to present to the Coastal Commission on the proposed recordation of a Notice of Violation and identify any issues you would like us to consider.

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<sup>3</sup> An objection must be stated specifically.

### **Cease and Desist Order**

The Commission's authority to issue Cease and Desist Orders is set forth in Coastal Act Section 30810(a), which states the following:

*If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.*

Section 30600(a) of the Coastal Act states that development activity in the coastal zone requires a coastal development permit (CDP) before that development can occur. "Development" is defined in Section 30106 of the Coastal Act as follows:

*"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreation use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations... (emphasis added)*

Construction activities conducted on the property constitute development under Section 30106 and occurred in the Coastal Zone. The cited development is therefore subject to the permit requirement of Section 30600(a). No CDP has been issued for the cited development. Thus, the cited activities constitute unpermitted development under the Coastal Act.

Under Section 30810(b) of the Coastal Act, the Cease and Desist Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including immediate removal of any development or material. Pursuant to Section 30810(a) and 30810(b), I am issuing this notice of intent to commence Cease and Desist Order proceedings to compel: 1) removal of the unpermitted development on the property, and 2) restoration of areas impacted by the unpermitted development or its removal.

### **Restoration Order**

Section 30811 of the Coastal Act authorizes the Commission to order restoration of a site under the following terms:

Exhibit 7  
CCC-06-NOV-01 and CCC-06-CD-02  
and CCC-06-RO-02  
(Bredesen)  
page 4 of 6

*In addition to any other authority to order restoration, the commission...may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission... the development is inconsistent with this division, and the development is causing continuing resource damage.*

I have determined that the cited development meets the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) Unpermitted development has occurred, consisting of the construction of a walkway and irrigation system down a coastal bluff face, and the construction of a shade structure, patio, fire pit, storage lockers, and concrete planters at the toe of a coastal bluff.
- 2) This development is inconsistent with the resource protection policies of the Coastal Act, including but not limited to the following:
  - a) Section 30251 [protection of scenic and visual qualities of coastal areas and natural landforms],
  - b) Section 30253 [minimization of adverse impacts on geologic stability, erosion and community character].
- 3) The unpermitted development is causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. The unpermitted development has impacted the resources listed in the previous paragraph. Such impacts meet the definition of damage provided in Section 13190(b): "any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development." All of the impacts from the unpermitted development continue to occur at the subject property; therefore, the damage to resources protected by the Coastal Act is continuing.

For the reasons stated above, I have concluded it is necessary to commence Restoration Order proceedings before the Commission, in accordance with Section 13196(e) of the Commission's regulations, which states the following:

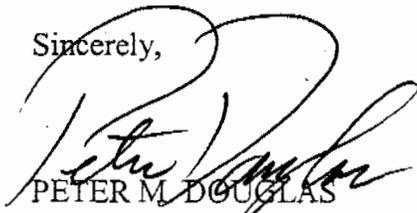
*Any term which the Commission may impose which requires the removal of any development or material shall be for the purpose of restoring the property affected by the violation to the condition it was in before the violation occurred.*

Accordingly, any Restoration Order that the Commission may issue in this matter will have as its purpose the restoration of the subject property to the conditions that existed prior to the occurrence of the aforementioned unpermitted development.

In accordance with Sections 13181(a) and 13191(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist and Restoration Order proceedings by completing the enclosed Statement of Defense form. **The Statement of Defense form must be returned to the Commission's San Francisco office, directed to the attention of Christine Chestnut, no later than Tuesday, February 7, 2006.**

Commission staff has tentatively scheduled the hearings for the Cease and Desist and Restoration Orders (and for the proposed Notice of Violation, should you additionally request **in writing** a hearing on this issue) during the Commission meeting on March 8-10 in Monterey. As always, we are more than willing to discuss a timely and amicable resolution of this matter. If you would like to discuss resolution of this matter via a Consent Order, please contact us immediately. If you have any questions regarding this letter or the enforcement case, please call Christine Chestnut at (415) 904-5294 or send correspondence to her attention at the address provided on the letterhead.

Sincerely,



PETER M. DOUGLAS  
Executive Director

Encl.: Statement of Defense form

cc (without Encl.): Lisa Haage, Chief of Enforcement  
Sandy Goldberg, Staff Counsel  
Alex Helperin, Staff Counsel  
Pat Veesart, Southern California Enforcement Team Leader  
Andrew Willis, Enforcement Officer  
Christine Chestnut, Headquarters Enforcement Analyst

FRED GAINES  
SHERMAN L. STACEY  
LISA A. WEINBERG  
REBECCA A. THOMPSON  
NANCI S. STACEY  
KIMBERLY RIBLE

LAW OFFICES OF  
**GAINES & STACEY, LLP**  
1111 BAYSIDE DRIVE, SUITE 150  
CORONA DEL MAR, CALIFORNIA 92625

TELEPHONE  
(949)219-2000  
FAX  
(949)219-9908

February 6, 2006

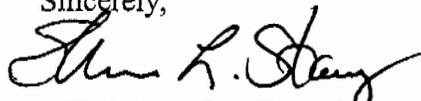
Ms. Christine Chestnut  
California Coastal Commission  
45 Fremont Street, #2000  
San Francisco, CA 94105

Re: Notice of Intent to Record Notice of Violation  
437 Paseo de la Playa, Torrance (Bredesen)  
Coastal Commission File No. V-5-01-037

Dear Ms. Chestnut:

On behalf of Chris and Virginia Bredesen, I object to the Executive Director recording a Notice of Violation with regard to the Bredesen property at 437 Paseo de la Playa, Torrance, California. The evidence which I would wish to present in connection with the intent to record a Notice of Violation is that same evidence which I would submit in connection with the Statement of Defense to the Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings. That Statement of Defense is also submitted herewith.

Sincerely,

  
SHERMAN L. STACEY

sls/sh

cc: Mr. & Mrs. Chris Bredesen

## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400

STATEMENT OF DEFENSE FORM

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by a notice of intent to initiate cease and desist and restoration order proceedings before the commission. This document indicates that you are or may be responsible for or in some way involved in either a violation of the commission's laws or a commission permit. The document summarizes what the (possible) violation involves, who is or may be responsible for it, where and when it (may have) occurred, and other pertinent information concerning the (possible) violation.

This form requires you to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You should complete the form (please use additional pages if necessary) and return it **no later than February 7, 2006** to the Commission's enforcement staff at the following address:

**Christine Chestnut**  
**Headquarters Enforcement Analyst**  
**California Coastal Commission**  
**45 Fremont Street, Suite 2000**  
**San Francisco, California 94105-2219**

If you have any questions, please contact **Christine Chestnut** at (415) 904-5294.

1. **Facts or allegations contained in the notice of intent that you admit (with specific reference to the paragraph number in such document):**

See Attached (Please note there are no paragraph numbers in the 6  
page document)

2. **Facts or allegations contained in the notice of intent that you deny (with specific reference to paragraph number in such document):**

See Attached ( Please note there are no paragraph numbers in the 6  
page document)

3. **Facts or allegations contained in the notice of intent of which you have no personal knowledge (with specific reference to paragraph number in such document):**

See Attached (Please note there are no paragraph numbers in the 6  
page document)

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4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:

See Attached

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5. Any other information, statement, etc. that you want to offer or make:

See Attached

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**STATEMENT OF DEFENSE  
NOTICE OF INTENT TO COMMENCE CEASE AND DESIST ORDER  
AND RESTORATION PROCEEDINGS  
CALIFORNIA COASTAL COMMISSION FILE NO. V-5-01-037**

Chris and Ginger Bredesen, Trustees  
437 Paseo de la Playa, Torrance

This Statement of Defense is submitted on behalf of Chris and Virginia Bredesen, Trustees, in response to the California Coastal Commission Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings dated January 18, 2006.

I have attached a true and correct copy of the verified Petition for Writ of Mandate filed on August 5, 2005, by the Bredesens in Los Angeles Superior Court Case No. YS014958. The Petition contains all of the allegations which respond to your Notice of Intent to Commence Cease and Desist Order Proceedings.

The evidence which I would offer in support of the Bredesens is all of the evidence contained in the administrative record for California Coastal Commission Permit Application No. 5-04-324, which I wish to incorporate in this matter by reference. I do not yet have a copy of this administrative record and I am handicapped in making a full response to your notice of intent violation as it has been almost 6 months since the request for the record was made. I have sent a check in payment for a copy of the record to Mila del Rosario at your San Francisco office. I have no knowledge of when the record will be delivered to me.

Further, I intend also to submit all of the permit files and any other information possessed by the Commission in the following cases:

A-12-20-73-2419,

Permit No. 5-85-755 (Briles),

Permit No. 5-90-1041A2 (Campbell),

Permits P-7266 and A-80-6753, and

Permit No. 5-90-1079 (Wright).

Again, the Commission, not the Bredesens, are in possession of all of these materials and I request that you send me copies of all of them.

Finally, I request that you transmit to me immediately all of the evidence which the Executive Directors has collected in connection with its Case No. V-5-01-037, including all notes, letters, writings, reports, photographs or other documents which you may possess. I am unable to fully respond to the Notice of Intent until I have seen such materials.

I request that you set no hearing in this matter until the administrative record has been delivered to me along with the materials which I have requested above as I have no precise record of what evidence the Commission possesses. Setting a hearing before you have delivered such documents would deprive the Bredesens of a fair hearing.

Notwithstanding the statements above those incorporated in the Petition for Writ of Mandate attached hereto and incorporated herein, all of which are currently also in the possession of the Coastal Commission, I would note the following facts:

There are eight parcels lying south of the State Beach property which are located on land which slopes gently from the beach. From north to south these parcels rise in elevation along Paseo de la Playa. South from the 8 parcels the elevation of the building portion of the private land rises to a point where the slope is no longer gentle and a steeper bluff profile is found. Of the 8 parcels, 6 have a path from the home at the top of the bluff to the beach. Three of these paths were approved by the Coastal Commission and found consistent with Chapter 3 policies of the Coastal Act. Permit No. 5-85-755 (Briles), Permit No. 5-90-1041A2 (Campbell). Permit No. 5-90-1079 (Bacon). The remaining 3 paths predated the Coastal Act. On the Bredesen property

at the time that it was purchased, it was obvious that the former occupants of the property had gone from the home to the beach on the slope of the property although no engineered path had been constructed. Footpaths in more than one location existed but were not particularly safe.

Of these 8 parcels, 5, including the Bredesens, have a permit from the Coastal Commission for a fence located at the beach along the agreed property line between the public beach and the private land. A-12-20-73-2419.

Of these 8 parcels 5 have improvements located at the sand level, two of which were approved by the Commission and found consistent with Chapter 3 of the Coastal Act. Permit No. 5-85-755 (Briles), Permit No. 5-90-1041A2 (Campbell). The remaining 3 parcels have improvements which predated the Coastal Act.

The paths approved by the Commission and found consistent with Chapter 3 policies of the Coastal Act include (1) a winding concrete path constructed with substantial walls and other improvements on the slope in Permit No. 5-85-755 (Briles), (2) a concrete path which runs directly down the slope in a straight line in Permit No. 5-90-1041A2 (Campbell), (3) a set of railroad tie steps which run down the slope in a straight line in Permit No. P-7266 and A-80-6753 (Bacon), and another set of railroad tie steps in Permit P-80-1079 (Wright). Each of these was separately found consistent with Chapter 3 policies of the Coastal Act. In none of these cases was any applicant asked to modify any vegetation on the slope.

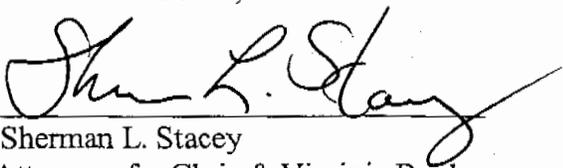
The Bredesens sought a permit to construct a much more modest path using natural materials and offered to remove introduced vegetation on the slope which had existed before the Bredesens purchased the property and replace it with native plants. The Bredesens spent more than \$80,000 on landscape design and engineering to satisfy requests made of the Bredesens by the Coastal Staff. Despite the encouragement from Coastal Staff on the application, despite the

offer to revegetate the slopes with native plants, and despite the prior determinations that other more obvious and less carefully designed paths were consistent with Chapter 3 policies of the Coastal Act, the Commission capriciously and arbitrarily denied the application to build a path. To now order the Bredesens to remove what they have challenged the denial of is premature and unnecessary. No continuing environmental harm is occurring. There is no further development taking place for which a Cease and Desist Order is justified and no development has taken place for the past 4 years. There is an implication in the Notice of Intent that the Bredesens continued with development after receiving a notification from the Commission in 2001. This is not true. All of the development which presently exists had been complete at the time that the Bredesens received their first notification that a Coastal Permit from the Coastal Commission would be required. There is no basis for the Commission to issue a cease and desist order as the Bredesens have ceased and desisted performing any development on the property which may require a permit for a long time.

The issuing of a restoration order is also premature. The Bredesens have challenged the decision of the Commission to deny permit no. 5-04-324 as being an abuse of discretion. Los Angeles Superior Court Case No. YS 014958. No cease and desist or restoration order proceedings should be conducted until after a trial on their Petition for Writ of Mandate.

The Bredesens reserve the right to amend, supplement or modify this statement of defense at any time up to and including the date of any hearing which may be held on any proposed cease and desist or restoration orders.

GAINES & STACEY, LLP

By   
Sherman L. Stacey  
Attorneys for Chris & Virginia Bredesen

Dated: February 6, 2006

CONFIRMED COPY  
OF ORIGINAL FILED  
Los Angeles Superior Court

AUG - 5 2005

John A. Clarke, Executive Officer/Clerk

By M. Haran, Deputy

1 Sherman L. Stacey (State Bar No. 62879)  
2 Nanci S. Stacey (State Bar No. 210295)  
3 GAINES & STACEY, LLP  
4 1111 Bayside Drive, #150  
5 Corona del Mar, CA 92625  
6 TEL: (949)219-2000  
7 FAX: (949)219-9908

8 William Beverly (State Bar No. 81573)  
9 BEVERLY & ASSOCIATES  
10 3424 Carson Street, Suite 400  
11 Torrance, CA 90503  
12 TEL: 310-793-7766  
13 FAX: 310-793-7765

14 Attorneys for Petitioner

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 FOR THE COUNTY OF LOS ANGELES

17 YS014958

18 CHRIS BREDESEN and GINGER )  
19 BREDESEN, AS TRUSTEES OF THE C. )  
20 G. AND V. C. BREDESEN TRUST, )

21 Petitioner, )

22 v. )

23 CALIFORNIA COASTAL COMMISSION, )  
24 PETER DOUGLAS, Executive Officer of )  
25 CALIFORNIA COASTAL COMMISSION, )  
26 and DOES 1 through 10, inclusive, )

27 Respondents, )

CASE NO. \_\_\_\_\_

PETITION FOR WRIT OF MANDATE;  
COMPLAINT FOR DECLARATORY  
RELIEF (CCP §1094.5, §1060)

CASE ASSIGNED FOR  
ALL PURPOSES TO  
Judge Lois Smalte  
Dept. M Div. DV

28 NOW COME CHRIS BREDESEN and GINGER BREDESEN, AS TRUSTEES OF THE  
C. G. AND V. C. BREDESEN TRUST, Petitioners, who petitions for a Writ of Mandate and a  
declaration of his rights against RESPONDENTS CALIFORNIA COASTAL COMMISSION and  
PETER DOUGLAS, the Executive Director of the CALIFORNIA COASTAL COMMISSION,  
and who alleges as follows:

Exhibit 8  
CCC-06-NOV-01 and CCC-06-CD-02  
and CCC-06-RO-02  
(Bredesen)  
Page 10 of 32

AUG - 5 2005

John A. Clark, Executive Officer/Clerk

By M. Heron, Deputy

1 Sherman L. Stacey (State Bar No. 62879)  
Nanci S. Stacey (State Bar No. 210295)  
2 GAINES & STACEY, LLP  
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4 FAX: (949)219-9908

5 William Beverly (State Bar No. 81573)  
BEVERLY & ASSOCIATES  
6 3424 Carson Street, Suite 400  
Torrance, CA 90503  
7 TEL: 310-793-7766  
FAX: 310-793-7765

8 Attorneys for Petitioner  
9

10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF LOS ANGELES

13 YS014958

14 CHRIS BREDESEN and GINGER  
BREDESEN, AS TRUSTEES OF THE C.  
15 G. AND V. C. BREDESEN TRUST,

16 Petitioner,

17 v.

18 CALIFORNIA COASTAL COMMISSION,  
PETER DOUGLAS, Executive Officer of  
19 CALIFORNIA COASTAL COMMISSION,  
and DOES 1 through 10, inclusive,

20 Respondents,  
21

CASE NO. \_\_\_\_\_

PETITION FOR WRIT OF MANDATE;  
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CASE ASSIGNED FOR  
ALL PURPOSES TO

Judge Lois Smalts  
Dept. M DIV

22  
23 NOW COME CHRIS BREDESEN and GINGER BREDESEN, AS TRUSTEES OF THE  
24 C. G. AND V. C. BREDESEN TRUST, Petitioners, who petitions for a Writ of Mandate and a  
25 declaration of his rights against RESPONDENTS CALIFORNIA COASTAL COMMISSION and  
26 PETER DOUGLAS, the Executive Director of the CALIFORNIA COASTAL COMMISSION,  
27 and who alleges as follows:  
28

Exhibit 8  
CCC-06-NOV-01 and CCC-06-CD-02  
and CCC-06-RO-02  
(Bredesen)  
Page 11 of 32

1 PARTIES

2 1. PETITIONERS CHRIS BREDESEN and GINGER BREDESEN, AS TRUSTEES OF  
3 THE C. G. AND V. C. BREDESEN TRUST are individuals residing in the City of Torrance,  
4 County of Los Angeles, State of California.

5 2. RESPONDENT CALIFORNIA COASTAL COMMISSION is an agency of the State  
6 of California charged with the administration of the Coastal Act of 1976, Public Resources Code  
7 §§30,000 et seq., and is hereinafter referred to as "RESPONDENT Commission".

8 3. RESPONDENT PETER DOUGLAS is the Executive Director of RESPONDENT  
9 Commission charged with the execution and supervision of the acts of the RESPONDENT  
10 Commission pursuant to Public Resources Code §30335, and is hereinafter referred to as  
11 RESPONDENT Douglas. The acts of RESPONDENT Douglas are carried out by employees of  
12 the State of California under the control of RESPONDENT Douglas and acts of RESPONDENT  
13 Douglas alleged herein may have been carried out by one or more of such employees.  
14 RESPONDENT Douglas has been Deputy Director or Executive Director of the RESPONDENT  
15 Commission for not less than 25 years.

16 4. PETITIONERS are unaware of the true names and identities of the respondents named  
17 herein as DOES 1 through 10, inclusive, and names such respondents by fictitious name. Upon  
18 ascertaining the true name and identity of any such named Respondent, Petitioners will amend this  
19 Complaint setting forth such true name and identity.

20  
21 GENERAL ALLEGATIONS

22 5. PETITIONERS are now and have been since at least May 15, 2000, the owner of  
23 certain real property located at 437 Paseo de la Playa in the City of Torrance, County of Los  
24 Angeles, State of California. Such real property is hereinafter referred to as the "Bredesen  
25 Property".

26 6. The Bredesen Property is improved with a single family residence and has been  
27 improved with a single family residence since at least 1977.

28 7. PETITIONERS have occupied the Bredesen Property as their residence since 2000 at

Exhibit 8  
CCC-06-NOV-01 and CCC-06-CD-02  
and CCC-06-RO-02  
(Bredesen)  
Page 12 of 32

1 the time of their purchase of the Bredesen Property.

2 8. The easterly boundary of the Bredesen Property is the front on Paseo de la Playa, a  
3 street. To the rear of the main dwelling on the Bredesen Property is a slope which descends to the  
4 sandy beach. The westerly boundary of the Bredesen Property abuts a publicly used beach. A  
5 chain link fence on the westerly boundary of the Bredesen Property separates the Bredesen  
6 Property from the public beach. Within the Bredesen behind the fence is a portion of the sandy  
7 beach area at the bottom of the slope. To the north and to the south of the Bredesen Property are  
8 other privately owned single family residences similarly situated. Attached hereto as Exhibit 1 is  
9 a photograph showing the PETITIONERS' Property and the surrounding area.

10 9. On or about October 4, 2001, PETITIONERS obtained a hillside modification permit  
11 from the City of Torrance to perform certain improvements on the Bredesen Property, which  
12 improvements were to the rear of the dwelling. The improvements consisted of a path to the  
13 beach area down the slope and other improvements at the bottom of the slope.

14 10. Between October 4, 2001 and December 31, 2001, Petitioners performed  
15 improvements on the rear of the Bredesen Property.

16 11. On or about July 16, 2002, PETITIONERS sent to RESPONDENT Commission a  
17 permit application seeking a permit for the improvements already completed.

18 12. PETITIONERS received no reply from RESPONDENT Commission to their permit  
19 application.

20 13. On or about March 14, and April 11, 2003, Petitioners received two letters from  
21 RESPONDENT Douglas informing them that RESPONDENT Douglas believed that the  
22 improvements had been performed unlawfully because no permit had been obtained from  
23 RESPONDENT Commission for such improvements. Said letter informed the PETITIONERS  
24 that a permit application for such improvements could be made to RESPONDENT Commission.

25 14. On or about April 28, 2003, PETITIONERS filed Permit Application No. 5-03-212  
26 with RESPONDENT Commission seeking a permit for the improvements already completed.

27 15. In or about September, 2003, PETITIONERS employed a consulting firm, Dall &  
28 Associates, to assist them in connection with their Permit Application which although submitted

Exhibit 8  
CCC-06-NOV-01 and CCC-06-CD-02  
and CCC-06-RO-02  
(Bredesen)  
Page 13 of 32

1 in April 2003, had not yet been set for hearing.

2 16. In or about October, 2003, representatives of Dall & Associates met with employees  
3 of RESPONDENT Commission supervised by RESPONDENT Douglas to discuss modifications  
4 to PETITIONERS' Permit Application which would make the improvements proposed by  
5 PETITIONERS consistent, in the opinion of RESPONDENT Douglas, with the policies of the  
6 Coastal Act.

7 17. On or about December 5, 2003, PETITIONERS withdrew Application for Permit No.  
8 5-03-212 from consideration by RESPONDENT Commission. PETITIONERS hired engineers,  
9 architects, designers, landscapers and other persons recommended by Dall & Associates, for the  
10 purpose to providing changes to their improvements and evidence regarding their impacts which  
11 would demonstrate to RESPONDENT Douglas and RESPONDENT Commission that such  
12 improvements were consistent with the policies of the Coastal Act. Such changes included  
13 removing vegetation existing on the slope and replacing it with plants consistent with native  
14 vegetation as found in plants along the shoreline in other areas of Los Angeles County. This  
15 change was recommended by RESPONDENT Douglas in meeting with Dall & Associates.

16 18. On or about August 12, 2004, Dall & Associates on behalf of PETITIONERS  
17 submitted Permit Application No. 5-04-324 with RESPONDENT Commission seeking a permit  
18 to (1) construct and maintain the pathway already in existence, (2) construct and maintain a patio  
19 at the toe of the slope, (3) construct and maintain a shade roof structure over the patio, (4) alter the  
20 vegetation on the slope to native vegetation consistent with a plant list recommended by  
21 RESPONDENT Douglas, (5) modify the existing fire pit to a planter, and (6) certain other  
22 improvements and amenities as described in the Permit Application.

23 19. On or about September 15, 2004, RESPONDENT Douglas wrote to Dall &  
24 Associates an undated letter alleging that Application for Permit No. 5-04-324 could not be filed  
25 unless PETITIONERS also supplied additional documents and information to RESPONDENT  
26 Commission. At this time, and for the first time, RESPONDENT Douglas asserted that the  
27 proposal to replant the slope with native vegetation was deficient because the plants chosen were  
28 from the beach areas near the Santa Monica mountains, the precise plants recommended to be

Exhibit 8  
CCC-06-NOV-01 and CCC-06-CD-02  
and CCC-06-RO-02  
(Bredesen)  
Page 14 of 32

1 included in the landscape design by RESPONDENT Douglas, and that PETITIONERS must  
2 revise the plant design to include plants from the Palos Verdes Peninsula which would be  
3 consistent with the habitat for the El Segundo Blue Butterfly, an endangered species which had  
4 never been found on PETITIONERS' Property.

5 20. On or about October 25, 2004, Dall & Associates on behalf of PETITIONERS filed  
6 the additional documents and information requested by RESPONDENT Douglas in the undated  
7 letter referred to in Paragraph 19 above.

8 21. On or about November 3, 2005, RESPONDENT Douglas allegedly filed the  
9 PETITIONERS' Permit Application No. 5-04-324. At such time, RESPONDENT Douglas came  
10 under a duty pursuant to Public Resources Code Section 30621(a) to schedule a hearing before  
11 RESPONDENT Commission on or before December 22, 2004.

12 22. Although RESPONDENT Commission held meetings and conducted hearings  
13 between November 17 and 19, 2004 and between December 8 and 10, 2004, RESPONDENT  
14 Douglas did not schedule a hearing on PETITIONERS' Permit Application No. 5-04-324 at either  
15 of those meetings.

16 23. In January 2005, RESPONDENT Douglas scheduled the date of February 17, 2005 as  
17 the date for hearing before RESPONDENT Commission on PETITIONERS' Permit Application  
18 No. 5-04-324.

19 24. On or about January 27, 2005, RESPONDENT Douglas issued a Staff Report and  
20 Recommendation to the RESPONDENT Commission that PETITIONERS' Permit Application  
21 No. 5-04-324 be denied in its entirety and included recommended findings of fact.

22 25. On or about February 14, 2005, in accordance with the regulations governing the  
23 RESPONDENT Commission contained in California Code of Administrative Regulations, Title  
24 14, Section 13073, Dall & Associates requested that the hearing scheduled for February 17, 2005,  
25 be continued to a later date.

26 26. Subsequent to February 14, 2005, PETITIONERS amended the Permit Application  
27 No. 5-04-324 to provide for the removal of the shade roof over the patio and the erection of a  
28 smaller trellis in its place.

1 27. On or about May 19, 2005, RESPONDENT Douglas issued a Staff Report and  
2 Recommendation to the RESPONDENT Commission that PETITIONERS' Permit Application  
3 No. 5-04-324 be denied in its entirety and included recommended findings of fact.

4 28. On or about June 7, 2005, a hearing on PETITIONERS' Permit Application No. 5-04-  
5 324 was held before RESPONDENT Commission. At the conclusion of such hearing, a motion  
6 was made to continue the hearing which failed by a vote of 3 in favor and 5 opposed. Thereafter,  
7 RESPONDENT Commission voted to deny PETITIONERS' Application No. 5-04-324 in its  
8 entirety and to adopt written findings of fact recommended by RESPONDENT Douglas.

9  
10 FIRST CAUSE OF ACTION

11 (Writ of Administrative Mandate, CCP §1094.5, Denial of Fair Hearing)

12 29. PETITIONERS refer to and reallege the allegations made in Paragraphs 1 through 28  
13 of this Petition as though fully set forth herein.

14 30. RESPONDENT Commission failed to afford to PETITIONERS a fair hearing.

15 31. RESPONDENT Commission concluded the hearing on June 7, 2005, at which time 6  
16 Commissioners were present and 6 Commissioners were absent. Of the absent Commissioners, 2  
17 were replaced by Alternates who attend the public hearing and vote in place of the absent  
18 Commissioner for whom each is an Alternate.

19 32. At the June 2005 meeting of the RESPONDENT Commission, 66 items were  
20 scheduled for public hearing, each hearing having a written Staff Report and Recommendation.  
21 On information and belief, PETITIONERS allege that the Staff Reports for the June 2005 meeting  
22 exceeded a total of 2,000 pages.

23 33. The Staff Report and Recommendation on the PETITIONERS' Permit Application  
24 No. 3-04-324 included 30 single spaced pages of proposed findings, 24 exhibits consisting of 103  
25 pages, and references to an additional 48 documents not included as Exhibits but examined by the  
26 RESPONDENT Douglas in formulating the Staff Report and Recommendation.

27 34. On or about May 27, 2005, RESPONDENT Douglas caused to be distributed to each  
28 Commissioner, copies of all the Staff Reports and Recommendations scheduled for hearing at the

1 meeting to be held between June 7 and June 10. On information and belief, PETITIONERS  
2 allege that RESPONDENT Douglas did not distribute to any Alternate copies of any Staff Report  
3 or Recommendation, including the Staff Report and Recommendation on PETITIONERS' Permit  
4 Application No. 5-04-324, prior to June 7, 2005.

5 35. All Commissioners and Alternates who are members of RESPONDENT Commission  
6 act on a part time basis and are otherwise employed in other pursuits. Half of the Commissioners  
7 and Alternates are also elected local government officials.

8 36. On June 7, 2005, Deborah Lee, an employee of RESPONDENT Commission  
9 supervised by RESPONDENT Douglas presented to the RESPONDENT Commission an oral  
10 report summarizing the written Staff Report and Recommendation on PETITIONERS' Permit  
11 Application No. 5-04-324. After the conclusion of Lee's presentation, PETITIONERS were  
12 allowed only 15 minutes to present to RESPONDENT Commission all evidence and arguments  
13 against the Staff Report and Recommendation.

14 37. At the conclusion of the 15 minutes allowed to PETITIONERS and an opportunity for  
15 other persons to be heard, Lee and other employees of the RESPONDENT Commission presented  
16 a rebuttal to the presentation on PETITIONERS' behalf. At the conclusion of that presentation,  
17 the Commissioners discussed the matter and voted to deny the Permit Application.

18 38. The hearing process described in Paragraphs 29 to 35 above does not afford to  
19 PETITIONERS a reasonable opportunity to be heard and denied to PETITIONERS a fair hearing.

20  
21 SECOND CAUSE OF ACTION

22 (Writ of Administrative Mandate, CCP §1094.5, Denial of Fair Hearing)

23 39. PETITIONERS refer to and reallege the allegations made in Paragraphs 1 through 28  
24 of this Petition as though fully set forth herein.

25 40. Prior to the hearing before RESPONDENT Commission on June 7, 2005, on several  
26 occasions, Dall & Associates, on behalf of PETITIONERS made requests for RESPONDENT  
27 Douglas to produce records of RESPONDENT Commission pursuant to the California Public  
28 Records Act.

1 41. The records sought to be found through Public Records Act requests by  
2 PETITIONERS were material evidence to their Permit Application No. 5-04-324.

3 42. RESPONDENT Douglas failed to perform his mandatory duty to produce to Dall &  
4 Associates the public records sought by PETITIONERS.

5 43. The failure of RESPONDENT Douglas to produce the public records sought by  
6 PETITIONERS denied to PETITIONERS a fair hearing before RESPONDENT Commission.

7  
8 THIRD CAUSE OF ACTION

9 (Writ of Administrative Mandate, CCP §1094.5, Abuse of Discretion)

10 44. PETITIONERS refer to and reallege the allegations made in Paragraphs 1 through 28  
11 of this Petition as though fully set forth herein.

12 45. There are numerous other properties similarly situated to the Bredesen Property  
13 fronting on Paseo de la Playa with homes constructed with access from Paseo de la Playa and rear  
14 yards which extend down the slope to the beach. RESPONDENT Commission has approved  
15 several other coastal development permits for improvements substantially similar to the  
16 improvements for which RESPONDENT Commission denied PETITIONERS' application for  
17 permit No. 5-04-324. The action to deny PETITIONERS' application for permit No. 5-04-324  
18 was arbitrary and capricious.

19 46. On or about December 31, 1973, the predecessor to the Commission, the California  
20 Coastal Zone Conservation Commission, approved Permit No. A-12-20-73-2419 authorizing the  
21 erection of a chain link fence on the sandy beach below the toe of the slope along the westerly  
22 boundary of five properties, including PETITIONERS' Property, located at 429, 433, 437, 445,  
23 and 449 Paseo de la Playa. Within one year of the date of approval of said permit, the chain link  
24 fence authorized thereby was erected and has been maintained on PETITIONERS' Property in the  
25 location approved for the past 31 years.

26 47. On or about February 5, 1986 RESPONDENT Commission approved Coastal  
27 Development Permit No. 5-85-755 authorizing development consisting of the construction at 429  
28 Paseo de la Playa of a concrete path from the top of the slope to the bottom of the slope and

Exhibit 8  
CCC-06-NOV-01 and CCC-06-CD-02  
and CCC-06-R.O-02  
(Bredesen)  
Page 18 of 32

1 improvements at the bottom of the slope both on the slope and on the sandy beach area behind the  
2 fence described in Paragraph 46 hereof, and adopted findings of fact to the effect that all such  
3 development was consistent with the policies contained in Chapter 3 of the Coastal Act, including  
4 but not limited to, Public Resources Code §§ 30251, 30210, 30211, 30212 and 30214.

5 48. On or about October 8, 1991, RESPONDENT Commission approved Coastal  
6 Development Permit No. 5-90-1079 authorizing development consisting of the construction at  
7 515 Paseo de la Playa of a wood stair path from the top of the slope to the bottom of the slope,  
8 and adopted findings of fact to the effect that all such development was consistent with the  
9 policies contained in Chapter 3 of the Coastal Act, including but not limited to, Public Resources  
10 Code §§ 30251, 30253 and 30212.

11 49. On or about October 23, 1995, RESPONDENT Commission approved an  
12 Amendment to Coastal Development Permit No. 5-90-1041A2 authorizing development  
13 consisting of the construction at 433 Paseo de la Playa of a concrete path from the top of the slope  
14 to the bottom of the slope and improvements at the bottom of the slope both on the slope and on  
15 the sandy beach area behind the fence described in Paragraph 46 hereof, and adopted findings of  
16 fact to the effect that all such development was consistent with the policies contained in Chapter 3  
17 of the Coastal Act, including but not limited to, Public Resources Code §§ 30240, 30251 and  
18 30253.

19 50. Numerous other homes similarly situation to PETITIONERS residence in the  
20 immediate vicinity enjoy pathways from the home on the upper part of the property to the beach at  
21 the bottom of the slope as well as improvements of decks and other facilities on the slope and at  
22 the bottom of the slope.

23 51. The decision of the RESPONDENT Commission to deny all of the improvements  
24 proposed by PETITIONERS was arbitrary and capricious in that the RESPONDENT Commission  
25 had approve similar development on similarly situated property located on both sides of  
26 PETITIONERS' Property.

27 ///

28 ///

Exhibit 8  
CCC-06-NOV-01 and CCC-06-CD-02  
and CCC-06-RO-02  
(Bredesen)  
Page 19 of 32

1 FOURTH CAUSE OF ACTION

2 (Writ of Administrative Mandate, CCP §1094.5, Abuse of Discretion)

3 52. PETITIONERS refer to and reallege the allegations made in Paragraphs 1 through 28  
4 and 45 through 51 of this Petition as though fully set forth herein.

5 53. RESPONDENT Commission abused its discretion in denying PETITIONERS' Permit  
6 Application No. 5-04-324 because the evidence before the RESPONDENT Commission did not  
7 support the findings adopted by the RESPONDENT Commission as set forth in Paragraphs 54 to  
8 65 herein.

9 54. The findings of the RESPONDENT Commission that all of the improvements  
10 proposed by the PETITIONERS in Application No. 5-04-324 are not consistent with Public  
11 Resources Code §30251 dealing with scenic and visual resources is not supported by substantial  
12 evidence in that (i) RESPONDENT Commission found similar improvements on similarly  
13 situated property immediately adjacent the PETITIONERS' Property to be consistent with Public  
14 Resources Code §30251; (ii) other properties in the immediate vicinity have similar  
15 improvements and have had such improvements for more than 30 years; (iii) PETITIONERS'  
16 Property is not a highly scenic area and is located in the heart of California's most urbanized  
17 county with the entire shoreline development with public and private improvements of every  
18 conceivable kind and variety, most of which are more visible than the improvements proposed by  
19 PETITIONERS; (iv) none of the improvements proposed by PETITIONERS interfere with the  
20 view enjoyed by the public from the public street or any other public location to the ocean; (v)  
21 every witness who testified before the RESPONDENT Commission testified that the  
22 improvements did not detract from the scenic quality of the area; (vi) PETITIONERS proposed to  
23 plant native vegetation of a variety recommended by RESPONDENT Douglas to screen any  
24 appearance of the path from the house to the beach from view even though the appearance of the  
25 path was similar to other improvements approved by RESPONDENT Commission; (vii)  
26 PETITIONERS amended their Permit Application to remove the shade roof and replace it with a  
27 considerably smaller trellis on which plants would be grown; the scenic appearance of  
28 PETITIONERS' Property from the beach is of the fence which for which Coastal Development

Exhibit 8  
CCC-06-NOV-01 and CCC-06-CD-02  
and CCC-06-RO-02  
(Bredesen)  
Page 20 of 32

1 Permit No. A-12-20-73-2419 was issued; (viii) the hedge on PETITIONERS' Property  
2 immediately behind the fence further reduces the visibility of improvements on PETITIONERS'  
3 Property even though there is no evidence that such improvements are not consistent with the  
4 scenic and visual quality of the area; (ix) PETITIONERS proposed to replant the slope with native  
5 vegetation, first from a plant list from the Santa Monica Mountains as recommended to  
6 PETITIONERS by RESPONDENT Douglas, and then from the Palos Verdes Peninsula to  
7 establish a possible habitat for the El Segundo Blue Butterfly as recommended by RESPONDENT  
8 Douglas; (x) PETITIONERS' Property is not in a special community or neighborhood as  
9 described in Public Resources Code §30253(5); (xi) even if PETITIONERS' Property were in a  
10 special community or neighborhood, the neighborhood has many other homes with improvements  
11 substantially similar to those proposed by PETITIONERS and PETITIONERS' improvements  
12 would be compatible with the character of the neighborhood; and (xii) the slope on  
13 PETITIONERS Property is not a cliff or a bluff but a sandy slope.

14         55. Even if substantial evidence supported the finding that some of the improvements  
15 proposed by PETITIONERS were not consistent with Public Resources Code §30251, the finding  
16 that each and every such improvement was inconsistent with §30251 was not supported by  
17 substantial evidence for the reasons set forth in Paragraph 54 and the RESPONDENT  
18 Commission should have approved Permit Application No. 5-04-324 in part and denied in part.

19         56. The findings of the RESPONDENT COMMISSION that the improvements proposed  
20 by the PETITIONERS in Application No. 5-04-324 are not consistent with Public Resources  
21 Code §30253 relating to risks and hazards is not supported by substantial evidence in that (i) the  
22 slope on PETITIONERS Property is not a cliff or a bluff but a sandy slope; (ii) the alterations  
23 made to the slope on the PETITIONERS' Property do not constitute a substantial alteration of the  
24 natural landforms; (iii) the alternations made to the slope on PETITIONERS' Property are similar  
25 to alterations found by RESPONDENT Commission to be consistent with §30253 on other  
26 property similarly situated in the immediate vicinity; (iv) the alterations made to the slope on  
27 PETITIONERS' Property are similar to alterations made on other similarly situated property in  
28 the immediate vicinity; (v) PETITIONERS filed reports prepared by licensed geologists, Cotton,

Exhibit 8  
CCC-06-NOV-01 and CCC-06-CD-02  
and CCC-06-RO-02  
(Bredesen)  
Page 21 of 32

1 Shires & Associates, which attested that the improvements would assure stability and structural  
2 integrity; (vi) PETITIONERS' Property is not in a special community or neighborhood as  
3 described in Public Resources Code §30253(5); and (vii) even if PETITIONERS' Property were  
4 in a special community or neighborhood, the neighborhood has many other homes with  
5 improvements substantially similar to those proposed by PETITIONERS and PETITIONERS'  
6 improvements would be compatible with the character of the neighborhood.

7 57. Even if substantial evidence supported the finding that some of the improvements  
8 proposed by PETITIONERS were not consistent with Public Resources Code §30253, the finding  
9 that each and every such improvement was inconsistent with §30253 was not supported by  
10 substantial evidence for the reasons set forth in Paragraph 56 and the RESPONDENT  
11 Commission should have approved Permit Application No. 5-04-324 in part and denied in part.

12 58. The findings of the RESPONDENT COMMISSION that the improvements proposed  
13 by the PETITIONERS in Application No. 5-04-324 are not consistent with Public Resources  
14 Code §30235 relating to beach erosion is not supported by substantial evidence in that (i) the sole  
15 evidence before RESPONDENT Commission by a licensed engineer with expertise in coastal  
16 beach erosion processes was that none of the PETITIONERS' improvements would be subject to  
17 risk of erosion from the ocean; (ii) there was no evidence that any significant amount of sand was  
18 contributed to the local shore line sand supply from the slope on PETITIONERS' Property or that  
19 the PETITIONERS' improvements would interfere in any way with the local shoreline sand  
20 supply; (iii) RESPONDENT Commission found similar improvements on similarly situated  
21 property immediately adjacent the PETITIONERS' Property to be consistent with Public  
22 Resources Code §30235; and (iv) other properties in the immediate vicinity have similar  
23 improvements and have had such improvements for more than 30 years with no adverse effect on  
24 local shoreline sand supply.

25 59. Even if substantial evidence supported the finding that some of the improvements  
26 proposed by PETITIONERS were not consistent with Public Resources Code §30235, the finding  
27 that each and every such improvement was inconsistent with §30235 was not supported by  
28 substantial evidence for the reasons set forth in Paragraph 58 and the RESPONDENT

1 Commission should have approved Permit Application No. 5-04-324 in part and denied in part.

2         60. The findings of the RESPONDENT COMMISSION that the improvements proposed  
3 by the PETITIONERS in Application No. 5-04-324 are not consistent with Public Resources  
4 Code §§30210, 30220, and 30222 relating to public access to the shoreline is not supported by  
5 substantial evidence in that (i) RESPONDENT Commission found similar improvements on  
6 similarly situated property immediately adjacent the PETITIONERS' Property to be consistent  
7 with Public Resources Code §30210, 30220 and 30221; and (ii) other properties in the immediate  
8 vicinity have similar improvements and have had such improvements for more than 30 years with  
9 no adverse effect on public access or recreation on the public beach; (iii) every witness who  
10 testified before the RESPONDENT Commission testified that the improvements did not detract  
11 from the public's use of the public beach as did a petition signed by 430 persons who use the  
12 public beach; (iv) there was no evidence that the improvements degrade the area for public  
13 recreation; (v) the fence which exists and divides the public beach from PETITIONERS' Property  
14 was constructed pursuant to Coastal Development Permit No. A-12-20-73-2419; (vi) adequate  
15 public access to the beach abutting PETITIONERS' Property exists and has existed for the past 30  
16 years; (vii) there was no evidence that the public beach is narrower because sand from  
17 PETITIONERS' Property is not eroding onto the public beach; (viii) all of PETITIONERS'  
18 improvements are located on PETITIONERS' private property on PETITIONERS' side of the  
19 fence; (ix) there was no evidence that PETITIONERS' improvements create a less inviting beach  
20 appearance to the general public or otherwise deter the general public from using the public  
21 beach; (x) there was no evidence that PETITIONERS' Property was necessary for water oriented  
22 recreational activities; (xi) there was no evidence that PETITIONERS' Property was necessary to  
23 meet present or foreseeable future demand for public or commercial recreational uses; and (xii)  
24 there was no evidence that present or foreseeable future demand for public or commercial  
25 recreational uses is not adequately provided for in the area.

26         61. Even if substantial evidence supported the finding that some of the improvements  
27 proposed by PETITIONERS were not consistent with Public Resources Code §30210, 30220 or  
28 30221, the finding that each and every such improvement was inconsistent with §§30210, 30220

Exhibit 8  
CCC-06-NOV-01 and CCC-06-CD-02  
and CCC-06-RO-02  
(Bredesen)  
Page 23 of 32

1 or 30221 was not supported by substantial evidence for the reasons set forth in Paragraph 60 and  
2 the RESPONDENT Commission should have approved Permit Application No. 5-04-324 in part  
3 and denied in part.

4 62. The findings of the RESPONDENT COMMISSION that the improvements proposed  
5 by the PETITIONERS in Application No. 5-04-324 are not consistent with Public Resources  
6 Code §30240 relating to habitat is not supported by substantial evidence in that (i)  
7 RESPONDENT Commission found similar improvements on similarly situated property  
8 immediately adjacent the PETITIONERS' Property to be consistent with Public Resources Code  
9 §30240; and (ii) other properties in the immediate vicinity have similar improvements and have  
10 had such improvements for more than 30 years with no significant adverse effect on habitat; (iii)  
11 there was no evidence that PETITIONERS' property was an environmentally sensitive habitat  
12 area; (iv) there was no evidence that PETITIONERS' improvements would significantly degrade  
13 any environmentally sensitive habitat areas adjacent to PETITIONERS' property; (v) there was no  
14 evidence that PETITIONERS' improvements are not sited and designed to prevent impacts which  
15 would significantly degrade either environmentally sensitive habitat areas or parks and recreation  
16 areas; and (vi) PETITIONERS proposed to replant the slope with native vegetation, first from a  
17 plant list from the Santa Monica Mountains as recommended to PETITIONERS by  
18 RESPONDENT Douglas, and then from the Palos Verdes Peninsula to establish a possible habitat  
19 for the El Segundo Blue Butterfly as recommended by RESPONDENT Douglas.

20 63. Even if substantial evidence supported the finding that some of the improvements  
21 proposed by PETITIONERS were not consistent with Public Resources Code §30210, 30220 or  
22 30221, the finding that each and every such improvement was inconsistent with §§30210, 30220  
23 or 30221 was not supported by substantial evidence for the reasons set forth in Paragraph 60 and  
24 the RESPONDENT Commission should have approved Permit Application No. 5-04-324 in part  
25 and denied in part.

26 64. The findings of the RESPONDENT COMMISSION that the improvements proposed  
27 by the PETITIONERS in Application No. 5-04-324 would prejudice the ability of the City of  
28 Torrance to adopt a Local Coastal Program are not supported by substantial evidence for the

Exhibit 8  
CCC-06-NOV-01 and CCC-06-CD-02  
and CCC-06-RO-02  
(Bredesen)  
Page 24 of 32

1 reasons set forth in Paragraphs 54 through 63, and for the further reason that the City of Torrance  
2 has already approved a hillside modification permit for the PETITIONERS' improvements which  
3 are consistent with all local zoning laws.

4 65. Even if substantial evidence supported the finding that some of the improvements  
5 proposed by PETITIONERS would prejudice the ability of the City of Torrance to adopt a Local  
6 Coastal Program, the finding that each and every such improvement would prejudice the ability of  
7 the City of Torrance to adopt a Local Coastal Program was not supported by substantial evidence  
8 for the reasons set forth in Paragraph 60 and the RESPONDENT Commission should have  
9 approved Permit Application No. 5-04-324 in part and denied in part.

10 66. PETITIONERS reserve the right to make additional allegations that the  
11 RESPONDENT Commission abused its discretion by adopting findings not supported by  
12 substantial evidence in accordance with the proof once PETITIONERS have received the  
13 administrative record required by Code of Civil Procedure §1094.6 of the action before the  
14 RESPONDENT Commission on PETITIONERS' Permit Application No. 5-04-324.

15  
16 FIFTH CAUSE OF ACTION

17 (Writ of Administrative Mandate, CCP §1094.5, Abuse of Discretion)

18 67. PETITIONERS refer to and reallege the allegations made in Paragraphs 1 through 28  
19 and 45 through 66 of this Petition as though fully set forth herein.

20 68. RESPONDENT Commission abused its discretion in denying Permit Application No.  
21 5-04-324 in that the findings of the RESPONDENT Commission do not support the decision to  
22 deny the Permit Application.

23 69. Even if the findings made by the RESPONDENT Commission supported the denial of  
24 some of the improvements proposed by PETITIONERS, denial each and every such improvement  
25 was not supported by adequate findings and the RESPONDENT Commission should have  
26 approved Permit Application No. 5-04-324 in part and denied in part.

27 70. PETITIONERS reserve the right to make additional allegations that the  
28 RESPONDENT Commission abused its discretion by making a decision not supported by

Exhibit 8  
CCC-06-NOV-01 and CCC-06-CD-02  
and CCC-06-RO-02  
(Bredesen)  
Page 25 of 37

1 adequate findings in accordance with the proof once PETITIONERS have received the  
2 administrative record required by Code of Civil Procedure §1094.6 of the action before the  
3 RESPONDENT Commission on PETITIONERS' Permit Application No. 5-04-324

4  
5 SIXTH CAUSE OF ACTION

6 (Writ of Administrative Mandate, CCP §1094.5,  
7 Failure to Proceed in Manner Required by Law)

8 71. PETITIONERS refer to and reallege the allegations made in Paragraphs 1 through 28  
9 of this Petition as though fully set forth herein.

10 72. On or about November 3, 2004, RESPONDENT Douglas determined that the Permit  
11 Application No. 5-04-324 was complete and filed the Application.

12 73. Upon filing the Application RESPONDENT Commission came under a mandatory  
13 duty pursuant to California Public Resources Code §30621(a) to set a hearing on PETITIONERS'  
14 Permit Application No. 5-04-324 within 49 days of November 3, 2005 or by December 22, 2005.

15 74. RESPONDENT Commission held hearings on November 17, 18 and 19, 2004 and on  
16 December 8, 9 and 10, 2004, but did not set or hold a hearing on Permit Application No. 5-04-324  
17 on any of those dates.

18 75. RESPONDENT Commission breached its mandatory duty to set a hearing on Permit  
19 Application No. 5-04-324 by December 22, 2004.

20 76. PETITIONERS did not waive, expressly or impliedly, their right to have a hearing set  
21 on Permit Application No. 5-04-324 at any time prior to December 22, 2004.

22 77. RESPONDENT Commission did not set a hearing on Permit Application No. 5-04-  
23 324 until February 17, 2005, 105 days after November 3, 2004.

24 78. From and after December 23, 2004, RESPONDENT Commission came under a  
25 mandatory duty to allow the development sought by PETITIONERS in Application No. 50-04-  
26 324 to proceed without a Coastal Development Permit.

27 ///

28 ///

Exhibit 8  
CCC-06-NOV-01 and CCC-06-CD-02  
and CCC-06-RO-02  
(Bredesen)  
Page 26 of 32



1 85. PETITIONERS are entitled to a declaratory judgment that the regulations of the  
2 Commission governing the conduct of hearing found at California Code of Administrative  
3 Regulations, Title 14, §13000, and as administered by RESPONDENT Douglas are unreasonable  
4 and cannot be applied to any person who has a matter subject to the discretion of RESPONDENT  
5 Commission who disagrees with the recommendation made to the RESPONDENT Commission  
6 by RESPONDENT Douglas.

7  
8 NINTH CAUSE OF ACTION  
9 (CCP §1060, Declaratory Relief)

10 86. PETITIONERS refer to and reallege the allegations made in Paragraphs 1 through 28  
11 and Paragraphs 72 through 78 of this Petition as though fully set forth herein.

12 87. RESPONDENT Commission regularly and systematically fails to comply with Public  
13 Resources Code §30621 which requires that a hearing on an application for a permit from the  
14 RESPONDENT Commission be set within 49 days of the date the application for permit is filed.

15 88. PETITIONERS and others are deprived of their right to a hearing within the time  
16 established by Public Resources Code §30621 because RESPONDENT Commission and  
17 RESPONDENT Douglas have chosen to organize the conduct of hearings in a manner which does  
18 not and cannot reasonably be expected to result in hearings being conducted in the time  
19 established by law.

20 89. The likelihood that a party who has a matter subject to the discretion of  
21 RESPONDENT Commission will not be set for a hearing within 49 days of the date an  
22 application is filed is substantially greater if the party does not agree with the recommendation  
23 made or to be made by RESPONDENT Douglas.

24 90. The number of matters before RESPONDENT Commission which fail to be set  
25 within the 49 days required by Public Resources Code §30621 is so great that only a  
26 reorganization of the manner in which RESPONDENT Commission and RESPONDENT Douglas  
27 set and conduct hearings, such as the use of independent hearing officers to set and conduct  
28 hearings on matters where the party does not agree to the recommendation made by

Exhibit 8  
CCC-06-NOV-01 and CCC-06-CD-02  
and CCC-06-RO-02  
(Bredesen)  
Page 28 of 32

1 RESPONDENT Douglas, and made an independent recommendation to the RESPONDENT  
2 Commission. Unless and until some reorganization of the hearing process is undertaken,  
3 RESPONDENT Commission should be deprived of jurisdiction to act to approve or disapprove  
4 any development for which RESPONDENT Commission does not comply with Public Resources  
5 Code §30621 and set and hold a hearing within 49 days of the date an application for a permit is  
6 filed.

7 91. PETITIONERS are entitled to a declaratory judgment that the pattern and practice of  
8 the RESPONDENT Commission to not hold a hearing on every application for permit within 49  
9 days of the date such application is filed is unlawful and that RESPONDENT Commission is  
10 without jurisdiction to act to approve or to deny any application for which a hearing is not set and  
11 held within such 49 day period.

12 92. As to all of the causes of action alleged in this Petition, PETITIONERS have  
13 exhausted all administrative remedies available to them and have no speedy or adequate remedy in  
14 the ordinary course of law.

15  
16 WHEREFORE, PETITIONERS pray judgment as follows:

- 17 1. For a Peremptory Writ of Mandate directed to the RESPONDENTS ordering that  
18 RESPONDENT California Coastal Commission set aside its decision of June 7, 2005 to  
19 deny Application for Permit No. 5-04-324 and to take no further action to approve or  
20 disapprove Application for Permit No. 5-04-324.
- 21 2. For a Peremptory Writ of Mandate directed to the RESPONDENTS ordering them not to  
22 cause any of the improvements proposed by PETITIONERS in Permit Application No. 5-  
23 04-324 to be removed.
- 24 3. For a declaration that RESPONDENT Commission is without jurisdiction to approve or to  
25 deny Permit Application No. 5-04-324.
- 26 4. For a declaration that the hearing process in which RESPONDENT Commission engages  
27 as set forth in California Code of Administrative Regulations, Title 14, Sections 13000, et  
28 seq. is unlawful because it does not accord to parties who have matters within the

Exhibit 8  
CCC-06-NOV-01 and CCC-06-CD-02  
and CCC-06-RO-02  
(Bredesen)  
Page 29 of 32

1 jurisdiction of the Commission on which the Commission makes decisions to approve or  
2 disapprove and makes findings of fact, but who disagree with the recommendation made  
3 by RESPONDENT Douglas, a fair notice and opportunity to be heard.

4 5. For a declaration that the systematic failure of the RESPONDENT Commission to set and  
5 hold a hearing within 49 days of the date upon which an application for a permit is made  
6 as required by California Public Resources Code §30621 is unlawful and that the  
7 RESPONDENT Commission is without jurisdiction to approve or deny any application for  
8 permit for which it does not set and hold a hearing within 49 days of the date an  
9 application for permit is filed.

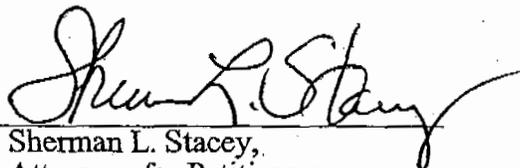
10 6. For costs of suit.

11 7. For reasonable attorney's fees.

12 8. For such other and further relief as the Court deems proper.

13  
14 GAINES & STACEY LLP  
15 and  
16 BEVERLY & ASSOCIATES

17 DATED: August 4, 2005

18 By   
19 Sherman L. Stacey,  
20 Attorneys for Petitioners

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27 Exhibit 8  
28 CCC-06-NOV-01 and CCC-06-CD-02  
and CCC-06-RO-02  
(Bredesen)  
Page 30 of 32

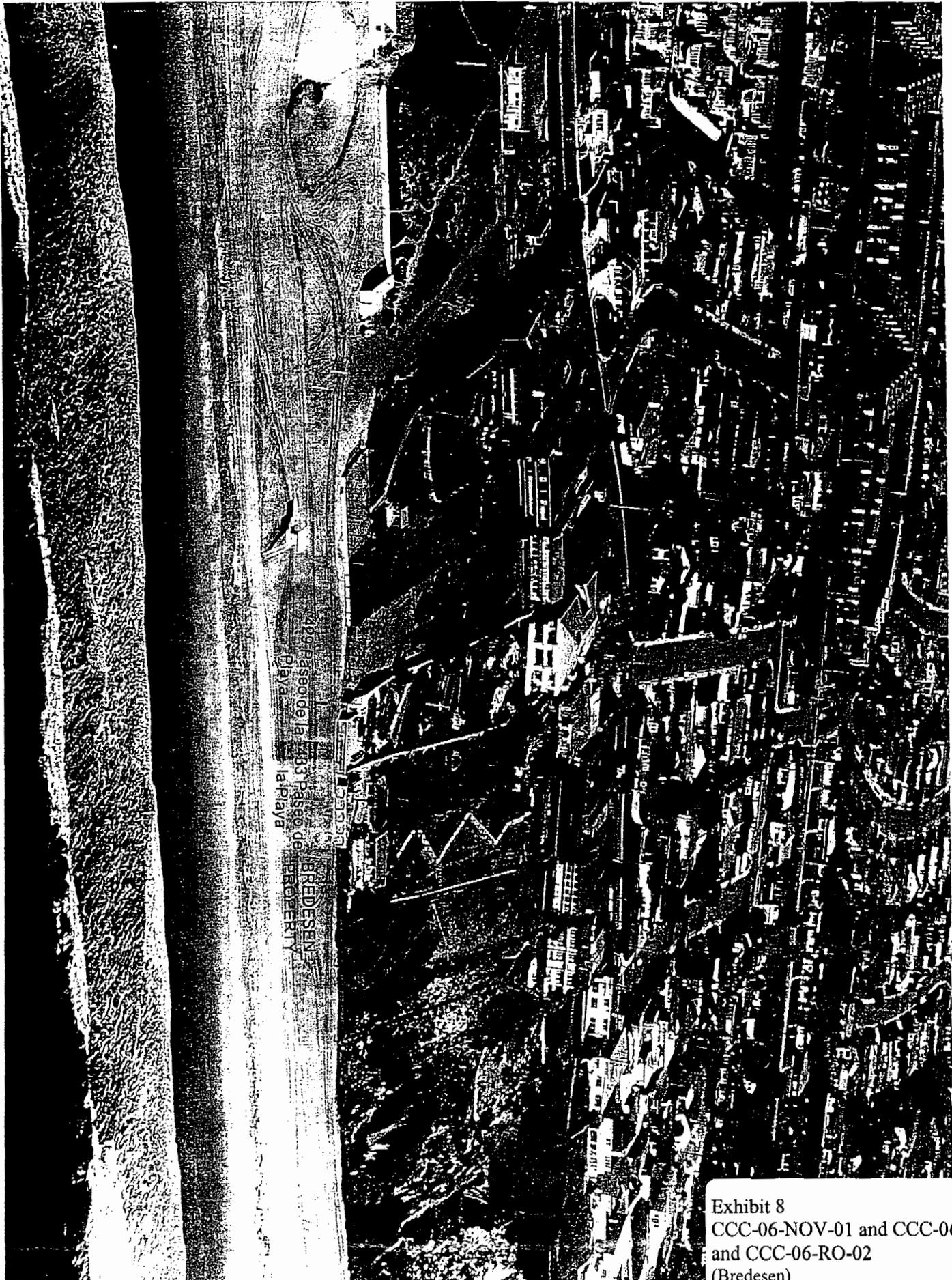


Exhibit 8  
CCC-06-NOV-01 and CCC-06-CD-02  
and CCC-06-RO-02  
(Bredesen)  
Page 31 of 32

